GLOBAL LEGAL INSIGHTS

Corporate Real Estate

First Edition

Contributing Editor: John Condliffe

Published by Global Legal Group

CONTENTS

Preface	John Condliffe, *Hogan Lovells International LLP*	
Belgium	Alexandre Emond & Jeroen Versnick, *Liedekerke Wolters Waelbroeck Kirkpatrick*	1
Brazil	Camila Mendes Vianna Cardoso, Alexandre Sales Cabral Arlota & Tereza Cristina de Almeida Marins Gorito, *Kincaid Mendes Vianna Advogados*	11
Colombia	Francisco Uribe, Isabel Rojas & Juanita Bermúdez, *Brigard & Urrutia Abogados S.A.S.*	20
Denmark	Hans-Peter Jørgensen & Jesper Avnborg Lentz, *Gorrissen Federspiel*	30
England & Wales	John Condliffe, Anthony Newton & Jamie Hyams, *Hogan Lovells International LLP*	40
Finland	Antti Laaksonen, Panu Penttilä & Sakari Lähteenmäki, *Project Law Attorneys Ltd*	50
France	Catherine Saint Geniest, Paul-Henri de Cabissole & Laura Viale, *JeantetAssociés A.A.R.P.I.*	58
Germany	Dirk Mackeprang & Hendrik Sandmann, *FPS Partnerschaftsgesellschaft von Rechtsanwälten mbB*	65
Greece	Panagiotis Drakopoulos & Maria Eliza Kyparissi, *Drakopoulos Law Firm*	76
Ireland	Jim Murphy, Richard Leonard & Jennifer Halpin, *McCann FitzGerald*	81
Italy	Luigi Croce & Christian Mocellin, *NCTM Studio Legale Associato*	90
Japan	Junko Ogushi, Russell K. Kawahara & Shuji Koyama, *Atsumi & Sakai*	100
Luxembourg	Léon Gloden & Max Becker, *Elvinger, Hoss & Prussen*	107
Netherlands	Leon Hoppenbrouwers & Niels Molenaar, *Allen & Overy LLP*	117
Norway	Thomas R. Håkonsen & Maren Müller, *Advokatfirmaet Schjødt AS*	127
Paraguay	Ana Añazco, Juan Carlos Boggino & Paolo Doria, *Peroni Sosa Tellechea Burt & Narvaja*	136
Romania	Florian Nițu & Ela Marin, *SCA Popovici Nițu & Asociații*	143
Russia	Alyona Kucher, Natalia Putilina & Dmitry Stakheev, *Debevoise & Plimpton LLP*	154
Spain	Andrés Monereo, Michael Fries & Mónica Regaño, *Monereo Meyer Marinel-lo Abogados*	166
Switzerland	Wolfgang Müller, Walter Häberling & Christian Eichenberger, *Meyerlustenberger Lachenal*	176

Spain

Andrés Monereo, Michael Fries & Mónica Regaño
Monereo Meyer Marinel-lo Abogados

A young market punished by the crisis

The corporate leasing market in Spain is very young in comparison with central and northern Europe. The first shopping centre in Spain was opened in 1983. However, Spain is currently the European country with the sixth most retail Gross Lease Area (GLA). And 55% of the total current GLA was promoted during the last decade.

The 2008 economic crisis violently exploded the Spanish real-estate bubble. The drop in GNP and the excessive GLA offer led the market to current unprecedented levels of vacancy (16% of the surface area of shopping centres and 13% of office surface area in 2012). Obviously rents have fallen dramatically for landlords. Only "golden shopping centres" are resisting the loss of affluent consumers. The "silver and bronze" shopping centres have seen a never-ending drop of footfall.

This crisis might seem like a great time for lessees, who can now negotiate lower rents and better conditions compared to in the past. However, the percentage of proceedings for non-payment of rents and insolvencies of lessees also constitute a daily topic in the leasing-legal relationship.

Key leasing provisions

The Spanish urban leasing Act (*Ley de Arrendamientos Urbanos*) and civil code contain the main regulation with regards to leasing. The Leasing Act establishes, for uses other than residential, as we are considering here, that freedom of agreement between the contracting parties is the main source of applicable law. Only in the case where there is no regulation between the parties concerning a specific leasing issue are almost all the provisions of the *Ley de Arrendamientos* applied as a subsidiary regulation. Given that these subsidiary regulations aim to protect the rights of the lessee rather than the lessor, in the practice of lease contracts, the application of the subsidiary legal regime tends to be avoided, establishing specific agreements between the parties and expressly excluding the application of the legal regulations of the rights of the lessee, as required by the Act.

The essential terms contained in the lease contract especially affect the following issues:

(a) Duration. The usual practice is to establish an initial period which must be complied with by the lessee, and one or various additional and successive renewal periods, whose validity depends on whether the tenant chooses to opt for such renewal periods. In the field of leasing, the right of the lessee to end or cease the contract is recognised. In such a case, the lessee must compensate the lessor for the damage caused by the breach. In order to avoid the complex calculations of the damages caused by this breach, the parties usually agree upon the use of the applicable compensation system.

The compensation for the breach of the lease by the lessees is one of the most important subjects in the negotiation of the contract. There are various alternatives for compensation: from the most extreme alternatives that calculate the amount of compensation as an amount that is equal to the rent from the total period that should have been fulfilled, to others that establish a fixed or maximum amount (for example, equivalent to the rent corresponding to a specific period of time).

Regardless of the compensation agreement reached, the courts have the authority to moderate the amount of compensation agreed upon in favour of the landlord. This moderation happens most often when the compensation agreed is high, and may cause an unjust enrichment for the lessor (consider a case where, after the tenant who has breached the contract pays the compensation, the unit is rented again for a price that is equal to or higher than what the non-complying tenant paid, the landlord thereby receiving an economic benefit).

(b) Rent. The rent price is agreed upon as an annual amount and the payment of said rent is set on a monthly basis, each month of equal amount and paid in arrears. For premises or offices under construction or not available for the tenant at the time the contract is signed, the rent is agreed upon by metres squared of the surface area of what will be leased, subject to the definitive measurements of the surface area.

In the retail sector the rent is often established according to a percentage of the sales made in the premises (variable rent). In such a case, the parties usually agree upon a guaranteed minimum rent that is paid monthly and against the variable rent that is calculated through the tax year, once the yearly sales of the lessee are verified.

The rent normally gets updated starting from the second year of the contract's validity, applying the annual index of price inflation, which the Ministry of Economy publishes monthly, to the rent originally agreed upon. However, there are a growing number of agreements that limit the revision of the rent. There are diverse possibilities in this regard: to agree upon freezing the revision of the rent during a determined period of time, or to establish a maximum limit for the applicable inflation rate, etc.

For contracts of a longer duration, a system for updating the rent according to market prices is usually agreed upon, starting from a certain point in the future. To this end the parties agree upon an arbitration system so that the future rent is established by a real-estate agent, taking into account the evolution of the market rent in the area that the leased property is located. In practice, this arbitration system is rarely imposed, since the parties tend to be able to reach an agreement on which is the applicable market rent.

(c) Permitted use. In the retail sector, the authorisation of the use which the lessee will employ for the property usually has to be very detailed, and the breach of the contents of this authorisation by the lessee usually constitutes a breach of the contract. Moreover, exclusive rights are often regulated, varying in range, in favour of the lessee regarding the authorised use. This includes an obligation from the landlord to protect this right, and to agree on corresponding compensation in the case that this right is violated.

In the sector of offices, the specification of the use by the tenant is not such a relevant issue as in the retail sector. Any business activity that is normally developed in an office is authorised.

(d) Assignment and subletting. The usual practice is to prohibit the lessee from the assignment of the contract. The interest of the landlord lies in being able to personally authorise (or deny, as the case may be) the change in lessee, in order to prevent the property from being assigned to a less economically solvent company than the assignor. With regards to subletting, authorisation may be given, depending on the specific case

(companies from the same group as the lessee or partial subletting). It must be taken into account that, unless a contrary agreement has been established, the Leasing Act grants the lessee the right to assignment and subletting, but in the case those rights are exercised, the lessee has the right to increase the rent by 20% (assignment and total subletting) or by 10% (partial letting).

(e) Sale by landlord. In this case, as a general principle, the act establishes that there is a subrogation by the buyer of the rights and obligations of the lessor. The only exception to this principle is if the acquirer was not aware of the lease contract. This last case may only happen exceptionally because the seller is obligated to declare on the deed of sale whether or not the property is leased. In such a case of misrepresentation, there could be an argument of criminal liability. Also, if the lease is public and evident, that is to say, if it can be observed that the property is occupied by a third party, the purchaser will not be able to justify that they were not aware of such lease.

(f) Security provided to landlord. One of the few issues for which the Spanish urban leasing Act imperatively establishes a non-negotiable regulation for both parties, is the obligation of the lessee to provide the lessor with a security as part of the lessee's obligations derived from the lease contract. This security comes in the form of money and should amount to the equivalent of two months' rent. The lessor is also obligated to deposit this security into the official organisations that each of the Autonomous Communities (Regions) of Spain has established. This security will be returned to the lessee when the contract ends, unless they face a leasing liability.

Moreover, the Leasing Act allows additional securities to be agreed upon other than the aforementioned legal security. In fact, it is common for the lessee to provide additional securities, whether they are bank guarantees, parent company letters, etc.

(g) Planning law. The landlord is obliged against the lessee to obtain and maintain the permission and licences of the building where the commercial premise or leased office is located. The above obligation can be easily confirmed if the building where the premise is located already exists. It is more complicated, however, in cases where the lease concerns a premise or office which is still to be built. The lessee is obligated to comply with the licences for the fit out of the premises and the activity which will take place there. (See 'Licences and permits' below.)

(h) Common service charges. It is usual to have an agreement in the lease contract by which the lessor charges the lessees with the hired unit's chargeable proportion of the expenses, services and taxes which correspond to common areas of the building where the leased unit is located. The proportion is set according to the coefficient resulting from dividing the GLA of the hired unit by the total GLA of the office building or shopping centre. Only the anchor tenants are able to negotiate caps on common charges. The lessee pays a fixed amount as estimation for common charges on a monthly basis, on top of the rent. This estimation is based on the budget of cost of the building produced by the lessor. After the end of the calendar year, the lessor is obliged to adjust the amount paid by the lessee during the previous year according to the real costs of the building.

(i) Landlord Tax charges. It is also a very common agreement in the lease contract for the lessor to charge the lessee the yearly town property taxes amount which corresponds to the hired unit. The main town tax is the IBI, which is calculated from the cadastral value of the building. Some towns may also tax the urban waste management. The increase of these town taxes in recent years makes the evaluation of this issue a very important consideration for the lessee.

(j) Insurance. The contract normally regulates the obligation of each party to apply for and hold their own insurance: the owner must contract and pay for insurance against material damages to the building, premises and damages to persons caused by third parties and natural causes, while the lessee must insure on their own behalf for material and personal damages which may be caused by the exercising of their activity. During the fit out or other works carried out, the party responsible for such works will insure the leased area temporarily while the work is being carried out. The parties usually commit to arranging insurance with the same insurance companies in order to facilitate a more efficient coverage for accidents, avoiding disputes between different insurance companies.

Taxes

For the lease contract the stamp duty is only triggered if such contract is formalised as a public deed. Nevertheless most of the contracts are executed as private documents. The main reason of executing a lease contract as a public document is because this is the only valid form for registration of the contract in the Land Registry. The registration prevents the lease contract from being extinguished in case of certain events, especially the case of the sale of the unit due to the foreclosure of a mortgage or sentence enforcement. The taxable base totals the rent attributable to the full period of the lease, including possible renewals. The tax rate varies from 1% to 2% depending on the Autonomous Communities.

The rent of corporate lease is subject to VAT. Since 2012 the VAT tax rate is 21%.

The lessee must carry out a tax withholding on the rent of the 21%. However, this obligation is not required if the cadastral value of the landlord's real estate assets for rent is over €600,000.

Licences and permits

The complex system of licences that existed in Spain and affected both landlords and lessees with regards to leases, has been simplified after the transposition of the Directive 2006/123/EC (the Bolkestein Directive). On the one hand, the retail licences that regionally (by Autonomous Communities) required the developers of large commercial establishments (buildings for commercial use, normally with a sale area of more than 2500m^2) and lessees to rent premises with such a sale area, have been eliminated. The granting or rejecting of such licences was based on the criteria of the retail regulations of the area where the large commercial establishment is to be introduced. The retail licence has caused many disputes, as it granted the regional administration broad criteria for them to award the licences. Additionally, the granting of this licence entailed a very long and cumbersome process. After the transposition of Directive 2006/123/EC, Autonomous Communities can exclusively require a licence for large commercial establishments based on environmental and town planning requirements.

On the other hand, urban municipal licences have been simplified for most cases based on the procedure of "liability statements". Through this statement the developer or lessee assumes the responsibility that they will comply with the legal requirements in order to carry out the construction work and develop the relevant activity. Through the presentation of liability statements before municipal administration, construction work may begin, and once this is finished, the business activity may then be initiated, without having to wait for the administration to carry out an inspection.

From June 1st 2013, it has become compulsory for the lessor to provide the lessee with an energy efficiency certificate for the building to be leased. The certificate must have

been issued by an engineer or architect. The certificate evaluates the energy efficiency and examines the building's compliance with environmental requirements.

Litigation

Generally, claims get filed by the owners, about 90-95% of these cases being filed due to the failure to pay the rent or sums related to the rent (e.g. communal expenses, supplies, services, fees and taxes).

With respect to the case-law of the Spanish Supreme Court and provincial courts from recent years regarding the leasing of commercial premises, we evaluate that most of the decisions, and the most relevant ones, focus on the following issues: for the abovementioned difficulties of rejecting a contract by the lessee and the estimation for compensation in favour of the lessor; the distribution of responsibility for the lessor and the lessee regarding upkeep and maintenance works; and finally the mere delay in payment of, or failure to pay the quantities related to, the rent as sufficient cause for eviction.

a) Lease proceedings

Departing from the Spanish civil procedure law currently in force and applicable to new proceedings, legal litigation concerning urban leases is generally processed by ordinary civil proceedings. In the said proceedings, a period is given to the defendant to answer in writing, a prior hearing is held in court, and afterwards the evidence is examined at trial.

However, the claims filed by landlords against lessees are mostly processed in a verbal proceeding, which is quicker than an ordinary proceeding. In the said verbal proceedings, the phase of challenging the claim in writing, and the act of the prior hearing, are eliminated. In this way the lessee may only answer the claim verbally in the trial, where the evidence will also be examined. As we have indicated, this proceeding is applicable to the most common claims against lessees, which are:

(i) claims due to non-payment of rent and sums related to the rent, regardless of the quantity claimed for;
(ii) eviction due to failure to pay the rent or sums related to the rent (e.g. communal expenses, supplies, services, fees and taxes). In this proceeding the lessor requests the termination of the lease contract and the recovery of the leased building; and
(iii) eviction due to the expiry of the contract's duration period.

It is important to highlight that, regarding the proceeding for eviction due to non-payment of the rent and related amounts, there are also specialities that make such proceeding a special and summary (verbal) trial. This is a proceeding which is processed very briefly, omitting even more processes and formalities than in other verbal trials. The legislator has tended to opt for strengthening the rights of the lessor against the debtor, especially in legal reforms of eviction proceedings in recent years, and because of the increase of non-payment situations, focusing efforts on making these proceedings quicker and more efficient in order to facilitate a quicker recovery of the property for the landlord.

Eviction trials are proceedings which could have costly consequences for the lessee. This is because the lessee, after having made an investment in the business which makes use of the leased premises, may be condemned to returning the property to the lessor within a short period and thereby losing the investment from before the repayment. The lessee could also be condemned to pay the quantities owed and costs of the proceedings. It is a quick proceeding, but it has very limited possibilities of defence for the lessee, as we will see later.

Additionally, we would like to emphasise that the lessor may exercise, in the same

declaratory proceeding, the eviction action and the claim for rent which will follow the specialities of the (abbreviated) eviction proceeding. In the same proceeding, the lessor may claim against the guarantor of the lessee, if they have previously been requested to pay.

As long as the sum of the claim exceeds €2,000, i.e. the majority of cases, the claimant and the defendant will need intervention from the lawyer and legal representative *(procurador)* in order to be able to act before the court. This does not only entail costs for the defendant in case they are condemned, but also in practice it may imply added difficulty for the defendant with regards to not having the time needed in order to request free legal assistance, or in order to find a defending lawyer who has enough time in the period established to study the case.

b) Eviction proceedings for non-payment

Means of defence of the lessee

In the special eviction proceeding due to non-payment, the possibilities for defence for the lessee are very limited, not only due to the 10-day period to evacuate the premises or pay the lessor or present an objection, as we will look at later on, but also regarding arguments that the lessee may make during the proceeding.

The lessee being claimed against will only be able to avoid being evicted by rendering the eviction ineffectual within the ten-day period, i.e. by paying all that is owed in that moment, provided the payment was not ordered by the lessor (in writing and authentically), more than 30 days prior to when the claim was filed. However, the lessee may only make use of this right to render the eviction ineffectual once, not being able to avoid eviction if it is the lessor's second eviction proceedings against the lessee due to non-payment.

Eviction for non-payment counts as a summary hearing, for which the means of defence of the lessee is exclusively limited to the circumstances referring to the payment and the rendering ineffectual of the eviction. This means that in the eviction, it is only argued whether the claimed quantities have already been paid for. Therefore, the lessee may not argue over possible non-compliance by the lessor which justifies the non-payment of the owed sums, for example, whether the rent which the lessor claims was correctly reviewed and updated according to what was agreed in the contract, the extent of the agreement for the payment of communal expenses, etc.

Therefore, we believe it to be recommendable for the lessee being claimed against to pay the entirety of the claimed quantity in the 10-day period from the claim notification. This is recommendable except for special cases where the hearing may prove that the debt has already been paid. In the case that the lessee understands that they do not have to pay the quantities that they have claimed, they will be obliged to file a claim in a new proceeding in order to claim, if applicable, what they have paid in excess, and clarify what actually corresponds to them.

Making eviction proceedings more efficient

As we have indicated, due to the increase in non-payments of rent, eviction hearings due to non-payment have seen the most reforms to date out of all of the hearings regulated in the Spanish civil procedure Law. The latest reform, made by Law 4/2013, was the sixth legal reform in the last eight years.

Despite the reforms introduced in 2009 and 2011, which reduced terms and made some stages of eviction proceedings simpler, it has been evaluated that eviction proceedings due to non-payment are still slow and inefficient and have thus been modified again in 2013. This modification entailed reducing the judicial intervention to a minimum, aiming

to facilitate the fast recovery of the leased property for the lessor. From references in the press of this new regulation on eviction, it has come to be known as an "express eviction":

(i) There has been an attempt to speed up eviction proceedings due to non-payment for cases where the lessee has not taken any action after the claim notification. For these cases, a period of ten days (not counting Saturdays, Sundays or Bank holidays) from the admission of the claim is introduced for the lessee, requiring them to proceed with the payment of the claimed quantity or, on evacuating, or to present written arguments. If the lessee takes no action, therefore not complying with any of these options, the Court Clerk will directly pronounce a ruling, thus terminating the process. It will not be necessary for the lessee to be notified of said ruling, given that the eviction date is set when the claim is admitted and notified. In doing this, the holding of a hearing is avoided.

In this way, in the case that the lessee does not take action during the short period of 10 days from the claim notification, and without holding a trial, the lessee may be condemned to paying the owed sums claimed for by the lessor, and the returning of the premises. Additionally, the sanction may extend to the rents accrued until the date of the voluntary return of the premises or until the eviction enforced by the courts.

Also, the eviction will be directly carried out, without the need for an enforcement claim or an additional notification to the lessee, given that the eviction date is fixed by the court when the claim is admitted, which was previously notified to the lessee. In the case that the eviction is enforced and the lessee does not remove their belongings from the property, they may be considered abandoned goods.

This last reform, contrary to previous ones, has been widely criticised. This is because it is argued that the 10-day period for the lessee to evacuate the building and pay the lessor or present an objection, is excessively short.

(ii) It is also important to highlight that the acts of notifying the defendant have been simplified. This also limits their possibilities of being defended. A very simplified process is established which allows, in the case that the lessee is not found in the leased property or the address appointed in the contract for the purposes of notifications, for the court to directly proceed to notify about the claim through a summons simply by putting up a notice on the relevant court's bulletin board, without the need to carry out a process of enquiring into the address of the defendant. In practice, the notification on the bulletin board is just a formality; given that it is highly unlikely that the defendant will be aware of such notification and therefore that claim proceeds, which greatly limits their rights.

From the modifications described, it is possible to clearly appreciate the intention of the legislator to make the recovery of the property for the lessor more efficient, although it implies significant risks for the defence of the lessee.

Lease of business premises and insolvency considering tenants' interests

Despite evidence that the economy is recovering, this year, the number of openings of bankruptcy proceedings will most probably reach a new record. Based on the number of bankruptcies that have opened in the first three quarters of 2013, it is estimated that by the end of the year, there will have been 10,000 bankruptcy proceedings in Spain. With regards to commercial leases, it should be highlighted that, of this figure, 18% of the bankruptcy proceedings correspond to the commercial sector. The Autonomous Communities of Madrid, Catalonia, Andalucía and Valencia represent 60% of the bankruptcy proceedings. Meanwhile, the number of bankruptcy proceedings has seen a major increase in the Regions

of Extremadura (84%) and Asturias (68%). In spite of all the efforts in legislation and case-law, unfortunately 95% of the bankruptcies end in liquidation of the debtor-lessee.

Logically, during a prolonged economic crisis, consumption suffers particularly, which in turn affects the commercial leasing market, and in this case shopping centres. Therefore, it is worth briefly analysing the opening of a bankruptcy proceeding, in respect of the assets of the lessee on the one hand, and on the other, the protection systems that the *Ley Concursal* (Insolvency Act) provides in order to protect the lessee and their assets. Less frequently, a situation of insolvency for the lessor may be produced, causing fewer effects for the contractual relationship.

One of the main interests of Spanish insolvency regulation centres, like all legislations, is in keeping the insolvent party in business, and reorganising it so as to avoid liquidation and the damage that it can cause for the economy. Recognising the fact that the lease of commercial premises normally forms the basis for the development of the business activity of the insolvent party, the Spanish Insolvency Act provides some general and special systems for the protection of the contractual relationship of the lease.

When it comes to a lease contract with continuing reciprocal obligations pending fulfillment, Spanish law foresees that the declaration of bankruptcy should not generally affect the validity of the lease contract. Moreover, a clause which authorises one of the contracting parties to terminate the contract because a bankruptcy proceeding has been opened on the assets of the other party, is considered invalid and eliminated from the contract, according to the Spanish regulations.

This means that, in the case that the lessee continues to comply with their contractual duties before the lessor, the contract will still be valid. All the available assets of the lessee must of course be authorised by Insolvency Administrators, in the case that the insolvent party intervenes or, in the case that the authorities are suspended, performed by the said Insolvency Administrators.

The rent accrued before the bankruptcy declaration will be considered as bankruptcy claims, therefore they will not be payable until the approval of the creditors' agreement or the liquidation of the assets. The rents that are accrued starting from the declaration are claims against the bankruptcy estate, which may be payable once they are due, with the possibility of the Insolvency Administrators, or in case of disputes, the bankruptcy judge, agreeing for them to be postponed in the interest of the bankruptcy.

The leased commercial premise is not the property of the bankrupt lessee. Therefore, the actions for the recovery of the property (for example, the enforcement of a property security), filed by the lessor, will not be suspended due to the declaration of bankruptcy.

However, if the lessee does not comply with their obligation to pay the rent, the lessor may file for the termination of the lease contract before the commercial court which processes the bankruptcy proceeding. To this end, the judge will set a hearing and summon the contracting parties as well as the Insolvency Administrators. If there is no agreement over the termination, the judge, in the interests of the insolvent party, must deny the termination of the contract, and set that it be complied with, in spite of the non-payment of the rent or other costs. In this case, all rents pending payment and future rents will be considered claims against the bankruptcy estate, which must be paid, in case of liquidation, before the bankruptcy claims are proceeded to be paid for.

The authority of the judge of the bankruptcy proceeding to restore the contractual relationship of the lease, despite the fact that there has been a breach of the contract,

is complemented by the authority of the Insolvency Administrators to stop the eviction action filed by the lessor prior to the bankruptcy declaration. To that end, the Insolvency Administrators must have paid all the pending rent – as well as that accrued before the opening of the bankruptcy proceedings – as well as the costs of eviction proceedings.

Securities that were granted to the lessor on conclusion of the contract, e.g. cash deposits, may not be used by the lessor after the opening of the insolvency proceedings, i.e. may not be offset with outstanding rental payments provided that there is a strict compensation prohibition. The insolvency administrator will add them to the tenant's list of assets.

All enforcement proceedings initiated against the tenant will be withheld at the moment of the opening of the bankruptcy proceedings, and accumulated with the bankruptcy proceedings. However, Spanish case law holds that in the case of the eviction of a lessee filed via civil proceedings before the bankruptcy proceedings, it is not an enforcement measure; therefore the eviction is carried out before the courts of first instance, unless the administrators make use of the mentioned authority to render the eviction ineffectual.

In the context of corporate leases, at the creditors' meeting, the phenomenon of the sale of production units within the bankruptcy proceedings at liquidation phase must be mentioned. It is a known fact that competitors of big brands and commercial chains in bankruptcy, make the most of the situation in order to buy shops and the business involved as a production unit. Spanish bankruptcy regulations facilitate the transfer of the assets of the bankrupt lessee and authorise the courts of the bankruptcy proceedings to agree on a subrogation of the acquirer in the lease contracts with a view to approving the liquidation plan proposed by Insolvency Administrators. It must be highlighted that, unless a contrary agreement is made, the lessee of the commercial premise is authorised to hand the lease of the premise to a third party according to urban leasing regulations.

Andrés Monereo
Tel: +34 913 199 686 / Email: amonereo@mmmm.es

Andrés is a founding partner of the firm, and has been a practising lawyer for 27 years, specialising in the areas of real estate and corporate law. In the area of real estate he advises investors on the acquisition, administration and sale of shopping centres. He also advises multi-national lessees on their lease contracts. He has formed part of teams of disputes relating to shopping centres (the closing of large commercial establishments, the breach of contracts, mortgage foreclosures, etc.). Through the above, Andrés has gained a wide range of legal expertise and a global vision of the retail sector. Andrés has been twice recommended as "leading lawyer" for real estate in Spain by the *Chambers Europe* guide.

Michael Fries
Tel: +34 913 199 686 / Email: mfries@mmmm.es

Michael is a partner of the firm, and has been a practising Spanish-German lawyer for 20 years, specialised in the areas of litigation, insolvency law and international distribution. In his position as director of the area of insolvency of the firm, he advises creditors and debtors in the different stages of the insolvency proceeding pre-insolvency, petition for insolvency proceeding, lodging of claims, composition phase and creditors' meeting, winding-up phase, classification of the insolvency, and personal responsibility of the managers and general directors of the debtor. In his function as an insolvency lawyer he defends the interests of owners and lessees of different Spanish shopping centres. Michael is author and co-author of various publications about Spanish Insolvency Law. He is vice-president of the German-Spanish Association of Jurists.

Mónica Regaño
Tel: +34 913 199 686 / Email: mregano@mmmm.es

Since joining mmmm in 2003, Mónica has gained 10 years of experience as a legal consultant, specialising in the areas of real estate and litigation. She is specialised in consultancy for lessors as well as lessees on their lease contracts regarding commercial premises. Her practice in litigation is focused on advising and representing the owners of different shopping centres regarding the leasing of premises. She has also participated in important operations such as purchases and sales of shopping centres, logistics warehouses, office buildings and photovoltaic plants, analysing and renegotiating lease contracts. Having experienced the ups and downs of the Spanish real estate market, she has gathered much valuable experience regarding lease contracts by advising in a large variety of deals and disputes, setting up and negotiating new lease contracts, renegotiating conditions for the lessees and defending the lessors' interests in judicial proceedings.

Monereo Meyer Marinel-lo Abogados

C/ Alfonso XII, 30, 5ª planta 28014, Madrid, Spain
Tel: +34 913 199 686 / Fax: +34 913 085 368 / URL: http://www.mmmm.es

Other titles in the *Global Legal Insights* series include:

- Banking Regulation
- Bribery & Corruption
- Cartels
- Corporate Tax
- Employment & Labour Law
- Energy
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions

Strategic partners:

ECLA – European Company Lawyers Association

www.globallegalinsights.com