

Developing a retail project (II)

The second stage that an investor will undertake for developing a retail project is the performance of the construction. At this second stage, as the project will be developed based on an existing structure or on a "greenfield project", the investor will have to fulfil all the procedures for the purpose of obtaining authorization for the works to be performed and to contract constructors specialized in performing demolition and/or construction works. For obtaining the construction authorization, the investor will contract, with authorized projectors, the performance of the demolition works performance project, if applicable, and, subsequently, of the construction works. The project and all the documents required by the laws applicable in terms of authorizing the construction works will be filed with the competent city hall with a view to obtain the demolition authorization, if applicable, and the construction authorization. In order to develop the construction and to complete the works, which need to observe strictly the provisions under the construction authorization, the investor will conclude construction agreements with several service providers. Upon the conclusion of such agreements, the investor needs to consider certain specific elements, such as the price of the agreement, which will be set either wholly or per unit of performance, so as to avoid an increase in the price by the constructor, grounded on the increase of the price of materials, or as the correlation of the works schedule with the payment of the services for avoiding a delay in completing the works. The construction works will be completed through the conclusion of a takeover protocol for the works, wherein local representatives and authorities will be involved.

The third stage in developing a retail project that the investor will undertake is to lease the construction. As a rule, negotiations and even the execution of lease agreements take place before the completion of the construction (sometimes as early as in a

project stage in the case of highly successful projects). Upon the conclusion of such agreements, the investor, in its capacity of owner of the leased premises, will need to consider essential aspects to be drafted in detail, such as the subject matter and the duration of the agreement, the adjustment pattern for the lease, the guarantees provided by the lessee, etc., as the return on the investment is based on the revenues brought by rents and on the consistency of their collecting, a major role being that of the provisions setting forth the lessee's right to terminate the agreement, and the sanctions applied in case of breach or termination of the agreement due to its default. Also, another major issue which the investor should take into account when concluding the lease agreements concerns the provision by the lessee of a set of insurance policies, such as the civil liability insurance policy for damages caused to the building, the liability insurance for the deeds of its own employees, etc.

In this stage, in order to avoid any potential subsequent inconveniences, the investor

should take into account to comply with the delivery date and to perform appropriately the arrangement of the rented premises, if it undertook such obligation.

Usually, the fourth and last stage of the development of a retail project is the sale thereof to a third party that shall take over and operate the project (as a rule, an investment fund interested in such acquisitions). Mention should be made that the sale of the project is not conditional on the completion of the abovementioned stages, being possible to initiate negotiations and even to sign a sale-purchase agreement during the second stage, i.e. the construction of the building. As a rule, the sale of such projects shall be performed by means of a share sale-purchase agreement for the transfer of the ownership right over the entire company that initiated the project.



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