

25/01/2023

## Commercial leaseholds: The legal ban for the tenant to ask a higher rent from the sub-tenant has been declared unconstitutional

Article 1762-6 (4) of the Civil Code prohibits the tenant from requesting a higher rent from the sub-tenant.

The legislator's purpose was to combat and prevent speculative operations consisting in a tenant asking from his sub-tenant a higher rent in the context of leaseholds for commercial premises.

The Constitutional Court however held that if the fight against speculation pursues an aim of general interest, which justifies the intervention of the legislator, the rent cap in the sublease contract imposed by article 1762-6 (4) of the Civil Code, is admittedly a disproportionate restriction on the freedom of trade and industry guaranteed by the Constitution. This restriction does indeed not allow the lessee to cover its operating costs (*inter alia* general and administrative costs), nor give him the possibility to earn a reasonable profit from the operation.

The Constitutional Court also adds that the option given to the secondary lessor to obtain a higher rent if he made specific investments for the activity of the sub-tenant is not likely to remedy such a disproportion.

The cap provided for in article 1762-6 of the Civil Code was therefore held unconstitutional.

In light of the Constitutional Court's decision it is currently possible in the context of a subletting agreement, to ask for a rent corresponding to the rent paid to the main lessor, plus the related operating costs relating to the subletting and a reasonable profit.

---

### EXPERTISE

REAL ESTATE & CONSTRUCTION

---

### KEY CONTACT

**François COLLOT** Partner

**Yasmine POOS** Partner

**Fanny MAZEAUD** Partner

**Henry DE RON** Partner

