

THE CODE OF CONDUCT FOR LEASING OF RETAIL PREMISES IN SINGAPORE

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The Fair Tenancy Pro Term Committee, consisting of representatives from both the landlord and tenant communities, was set up in June 2020 to develop a Code of Conduct for Leasing of Retail Premises (“**Code**”). The Code is effective from **1 June 2021**. The objective of the Code is to provide clear leasing guidelines and negotiation principles for landlords and tenants.

Application of the Code

The Code will apply to **Qualifying Retail Premises (“QRP”)**. In short, these are retail premises with a tenure of at **least one (1) year** and are permitted to be used by the Urban Redevelopment Authority (“**URA**”) and other relevant authorities for specified uses. The term Qualifying Retail Premises is set out in further detail below.

Qualifying Retail Premises

QRPs will have to meet two qualifiers.

1st Qualifier

The lease must be entered into on or after 1 June 2021 with a lease period of **at least one (1) year**.

2nd Qualifier

The QRP are premises which are permitted by the URA and other relevant authorities to be used for the following purposes:

- (1) food and beverage premises;
- (2) shops for retail and services;
- (3) medical/dental/aesthetic clinics;
- (4) pet shop and boarding;
- (5) commercial schools; and
- (6) sports and recreation, and places of entertainment.

Such premises can be located in shopping centres, office buildings, industrial and business parks, mixed-use developments, shop houses and shop flats, hotels, community centres, recreation and social clubs, museums, schools, hospitals, petrol kiosks, MRT stations, bus interchanges, and airports.

The next few sections will explore the 4 different Parts of the Code.

PART A: CONDUCT AND SPIRIT OF NEGOTIATIONS

Part A of the Code sets out the principles which the landlords and tenants should aim to embody in the spirit of negotiation of the lease agreements.

These principles are:

- (1) sharing a symbiotic interest in working together;
- (2) negotiating in good faith;
- (3) refraining from behaviours which are deemed as commercially unacceptable or unreasonable;
- (4) acting in an open, honest and transparent manner; and
- (5) not acting in bad faith (i.e. deliberately misleading the other party as to the nature/terms of the proposed lease; not disclosing facts or misrepresenting the facts).

PART B: LEASING PRINCIPLES FOR KEY TENANCY TERMS

Part B of the Code sets out the leasing principles for 11 key tenancy terms (“**Leasing Principles**”) and provides guidance on each point as to how the parties should conduct themselves during negotiations.

The 11 key tenancy terms are:

(1) Exclusivity

There should be no exclusivity clauses that would otherwise prevent the tenant from opening a branch/franchise or the landlord from leasing its premises to a similar business as that of the tenant within a designated area.

However, if both parties agree to an exclusivity clause, both parties are to make a **joint declaration** to the Fair Tenancy Industry Committee, **within fourteen (14) days** after the lease agreement has been signed, on the inclusion of such exclusivity clause.

(2) [Costs to Prepare the Lease Agreement and Third-Party Costs](#)

The Code provides guidelines on the typical costs that arise out of lease agreements such as the integration of the landlord's and tenant's point-of-sales system, costs incurred in the preparation of the lease agreement and other ancillary charges such as electricity. The guiding principles in relation to costs as set out in the Code are (i) transparency, (ii) legitimate and justifiable costs, and (iii) there must be no profiteering.

(3) [Advertising and Promotion Charge and Service Charge](#)

The landlord may increase the service charge and Advertising and Promotion (“**A&P**”) charge provided that the overall gross rent payable (which would include the service charge, and A&P charge) does not increase during the term of the tenancy.

(4) [Pre-termination by Landlord due to Landlord's Redevelopment Works](#)

The landlord may pre-terminate the lease agreement (i.e. terminating the tenancy before the expiry of the lease agreement) where the landlord intends to carry out redevelopment works as specified in the Code. The lease agreement should however include a clause allowing the landlord to pre-terminate the lease.

Where the landlord decides to exercise his/her right to pre-terminate the lease agreement, the landlord shall give the tenant at least six (6) months' prior written notice. In doing so, the landlord shall pay the tenant a compensation sum based on the method of calculation as set out in the Code.

A sample clause is provided under Schedule 1 of Part B of the Code.

(5) [Sales Performance](#)

There shall be no clauses in the lease agreement requiring the tenant to hit a specified sales target during the term of the lease.

However, if both parties agree to a sales performance clause, both parties are to make a **joint declaration** to the Fair Tenancy Industry Committee, **within fourteen (14) days** after the lease agreement has been signed, on the inclusion of the sales performance clause.

(6) [Material Adverse Change](#)

Although not mandatory, the Code encourages the re-negotiation of the lease where the tenant is “*prevented, obstructed, or hindered from performing its typical business activity*” due to circumstances beyond the tenant’s control.

(7) [Pre-Termination by Tenants](#)

Where the tenant requires a right to pre-terminate the lease due to exceptional circumstances, the lease agreement should contain provisions granting the same. A sample clause is provided under Schedule 2 of Part B of the Code.

Exceptional circumstances are defined as the following:

- (i) the business principal of the goods and/or services from which tenant has obtained the rights to sell the goods and/or provide the services which is being retailed at the premises is insolvent; or
- (ii) tenant loses the distributorship or franchise rights to sell the goods and/or provide the services which are being retailed at the premises (and is not due to either the non-performance or breach by tenant of the distributorship or franchise agreement).

(8) [Security Deposit](#)

For QRPs with a floor area of up to 5,000 square feet and with a lease term of up to three (3) years, the security deposit shall not exceed an amount equal to three (3) months’ gross rent.

However, if the landlords and the tenants agree on an alternative security deposit amount, both parties are to make a **joint declaration** to the Fair Tenancy Industry Committee, **within fourteen (14) days** after the lease agreement has been signed, declaring the alternative security deposit amount.

In addition, where the tenant chooses not to furnish the full security deposit in cash, the tenant ought to notify the landlord prior to the signing of the lease and the landlord shall accept a non-cash payment mode of up to fifty per cent (50%) of the security deposit.

(9) [Floor Area Alterations](#)

The landlord shall provide a certificate from a registered surveyor confirming the surveyed area of the premises.

Where the surveyed area varies from the floor area originally specified in the lease, the landlord shall be entitled to make the relevant adjustments within the specified notice period as stated in the Code.

(10) [Building Maintenance](#)

The Landlord is responsible for any loss or damage suffered by the tenant due to the failure of the landlord to maintain the building where the leased premises are located.

(11) [Rental Structure](#)

The rental formula must be based on a single rental computation throughout the lease term. This essentially means that the rent structure must not have an “either/or, whichever is higher” formula.

However, if the landlords and the tenants agree on an alternative rental structure that is not based on a single rental computation, to be included in the lease agreement, both parties are to make a **joint declaration** to the Fair Tenancy Industry Committee **within fourteen (14) days** after the lease agreement has been signed by both parties.

[PART C: DATA TRANSPARENCY](#)

The objective of this Part C is to allow for more data transparency as agreed by the Fair Tenancy Pro Term Committee. It also provides that where confidentiality clauses are drafted into the lease agreement, it shall be applicable to both the landlord and the tenant.

[PART D: DISPUTE RESOLUTION AND ENFORCEMENT OF CODE OF CONDUCT](#)

Part D provides a checklist for the landlord/tenant to allow both parties to be aware of the extent of the lease agreement’s compliance with the Code. The checklist should also indicate instances of non-compliance with the Code.

Part D also provides a general overview of the process dispute resolution between the landlord and the tenant.

Contact Us

Tito Isaac & Co LLP is a full-service Singaporean law firm established in Singapore over 20 years ago. With a team of 35 lawyers and over 40 support staff, we work closely with our corporate advisory wing, TIC Corporate Advisory, as well as our associates across Southeast Asia and beyond, to provide comprehensive and seamless advice on domestic and cross-border issues.

Please do not hesitate to contact us should you have any queries or require any clarification.

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