

Implementation of Code of Conduct for Leasing of Retail Premises in Singapore

A new code of conduct for leasing of retail premises in Singapore (“**Code**”) was introduced on 26 March 2021 and will be effective from 1 June 2021.

The Code was developed by the Fair Tenancy Pro Tem Committee which comprises representatives from Singapore’s landlord and tenant communities, members of Government, industry experts and academia. It serves as a set of mandatory guidelines to provide guidance to landlords and tenants of Qualifying Retail Premises (as detailed below) to enable a fair and balanced position in lease negotiations and a governance framework to ensure compliance with the Code as well as a dispute resolution framework for such landlords and tenants.

The Code applies to all premises held under a lease agreement or licence agreement entered into on or after 1 June 2021 with a tenure of more than one year and permitted to be used by the Urban Redevelopment Authority and other authorities for the Qualifying Retail Premises uses stipulated in the Code. Examples of premises which fall within the scope of Qualifying Retail Premises uses include restaurants, bars, retail shops, clinics, commercial schools, sports clubs and entertainment centres.

Following the introduction of the Code, landlords of Qualifying Retail Premises should ensure that provisions in their standard lease templates are consistent with the leasing principles set out in the Code.

Set out below are some of the key points under the Code which landlords and tenants of Qualifying Retail Premises should take note of:

- **No exclusivity clauses:** Exclusivity clauses which prevent or restrict a tenant from opening a branch or franchise or a landlord from leasing premises with a similar trade or business as that of the tenant’s trade or business within a designated area are not allowed unless both parties agree otherwise and make a joint declaration on the inclusion of such exclusivity clause to the Fair Tenancy Industry Committee (“**FTIC**”) within 14 days after the lease agreement has been signed.
- **Costs:** The Code sets out in detail the types of fees (including legal fees, costs relating to integration and maintenance of point-of-sales systems, electricity charges and others) which a landlord may charge its tenants and the circumstances in which such charges are allowed, with the key guiding principle being that fees must be justifiable to cover real costs and there must be no profiteering.
- **Pre-termination by landlord due to landlord’s redevelopment works:** If a landlord requires a right to pre-terminate a lease due to redevelopment works as specified in the Code, the lease agreement must contain provisions granting such right of pre-termination in accordance with the Code. A landlord must give no less than six months’ prior written notice to tenants to exercise such right and is required to compensate tenants for the value of the tenants’ capital expenditure works in accordance with the method of computation set out in the Code.

- **Pre-termination by tenant:** If a tenant requires a right to pre-terminate a lease due to exceptional conditions, the lease agreement must contain provisions granting such right of pre-termination in accordance with the Code. Exceptional conditions include the scenario where the business principal of goods and/or services from which the tenant has obtained the rights to sell the goods and/or provide the services which are being retained at the premises is insolvent or the tenant loses the distributorship or franchise rights to sell the goods and/or provide the services which are being retailed at the premises.
- **No sales performance clauses:** Sales performance clauses which allow a landlord to pre-terminate a lease if a specified sales target is not met by the tenant are not allowed unless both parties agree otherwise and make a joint declaration on the inclusion of such sales performance clauses to the FTIC within 14 days after the lease agreement has been signed.
- **Security deposit amount:** For Qualifying Retail Premises with a floor area of up to 5,000 square feet with a lease term of up to three years, the amount of security deposit payable by tenants must not exceed an amount equal to three months' gross rent unless both parties agree otherwise and make a joint declaration on the inclusion of such alternative security deposit amount to the FTIC within 14 days after the lease agreement has been signed. Tenants must also be allowed to pay up to 50% of the security deposit by way of a non-cash mode of payment as prescribed by the landlord.
- **Floor area alterations:** Landlords must provide a certificate from the registered surveyor confirming the surveyed area of the premises and if the surveyed area deviates from the floor area as originally specified in the lease agreement, the rent and security deposit amounts must be adjusted in accordance with the terms set out in the Code.
- **Rental structure:** All rental formulae must be based on a single rental computation and not contain an "either/or, whichever is higher" formula unless both parties agree otherwise and make a joint declaration on the agreed alternative rental structure to the FTIC within 14 days after the lease agreement has been signed.
- **Confidentiality clauses to apply to both parties:** Any confidentiality clauses in the lease agreement must be drafted to apply to both the landlord and tenant provided that each party must be allowed to disclose any lease-related information as stipulated in the Code (e.g., if required by law or regulation).

To ensure compliance with the Code, a landlord of Qualifying Retail Premises will be required to complete the checklist in the form as set out in the Code indicating the leasing principles in the lease agreement which deviate from the mandatory requirements of the Code and the lease principles which are not applicable and to provide the checklist to each tenant at the same time that the landlord sends the first draft of the lease agreement to the tenant.

For the purpose of enforcing the Code, if the landlord or tenant does not comply with the relevant sections in the Code during lease negotiations, either party may refer the matter to FTIC. In the event of any non-compliance by the landlord or tenant with the Code after the lease agreement has been signed, either party may escalate the matter to the Singapore Mediation Centre within 14 days of the signing of the lease agreement to resolve the matter.

If you would like information or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally work with or any of the following Partners:

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