

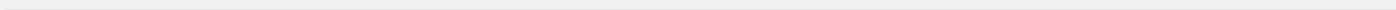


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Real Estate & Conveyancing / Feb 2024



Lease Agreements for Retail Premises Act 2023



The Lease Agreements for Retail Premises Act 2023 ("Act") commenced on 1 February 2024. The key objectives are to provide guidance to landlords and tenants in negotiations and the preparation of lease agreements, provide for certain key terms in tenancy agreements, and to establish the process for resolving disputes. Essentially, the Act mandates compliance with the Code of Conduct for Leasing of Retail Premises in Singapore ("Code").



How does the Act apply to you?

The Act applies only to “qualifying leases”. Qualifying leases are where (1) the agreement for the lease, extension or renewal is signed on or after 1 February 2024; (2) the period of the lease, extension or renewal is for at least 1 year; and (3) the lease is for retail premises. Retail premises generally refer to premises which are used primarily for sale of goods by retail, or for the supply of services.

If your lease is a qualifying lease, your lease agreement and negotiations must comply with the Code which is monitored by the Fair Tenancy Industry Committee (“FTIC”) (s 5 of the Act). Where there is permitted deviation from the Code, parties must mutually agree to the permitted deviation and the landlord must submit to the FTIC a declaration for permitted deviation according to the regulations (s 6 of the Act). The permitted deviation is otherwise deemed to be null and void.

Summary of Principles in the Code which apply to Tenancy Agreements

S/N	Principle	Some dos and don'ts of lease agreement clauses	Permitted Deviation
1.	Exclusivity	Exclusivity clauses (e.g. clauses restricting the tenant or landlord from operating a franchise within a certain distance from the qualifying lease) are generally prohibited.	In exceptional cases, parties may mutually agree on an exclusivity clause, wherein the landlord must submit the declaration of permitted deviation to the FTIC.
2.	Costs to prepare the lease agreement and third party costs	<p>The principles are that there must be transparency in the costs involved, legitimate and justifiable fees to cover real costs, and no profiteering. For example:</p> <p>(a) Transparency: third-party costs (e.g. public liability insurance and electricity charges) must be specifically set out in the lease agreement. "Catch-all" generic clauses (e.g. clauses referring to non-specific "third-party" costs) are prohibited.</p> <p>(b) Legitimate and justifiable fees: if the landlord's standard lease template is not in compliance with the Code, the cost of amendments (i.e., either legal or administrative fees but not both) is borne by the Landlord. If the standard lease template complies with the Code, and the tenant requests for amendments, the cost of amendments is borne by the tenant.</p>	NIL
3.	Advertising and promotion charge and service charge ("A&P charge")	Landlords may provide for adjusting the A&P charge, provided that the overall gross rent payable by the tenant during the lease term does not increase. Landlords are to keep proper records and accounts in respect of the A&P charge.	NIL
4.	Pre-termination by landlord due to landlord's redevelopment works	<p>Landlords may pre-terminate the lease (with sufficient notice and compensation where necessary) if the landlord intends to carry out redevelopment works at the location of the leased premises which require vacant possession.</p> <p>Note: Please refer to the sample clause provided in the Code.</p>	NIL

Summary of Principles in the Code which apply to Tenancy Agreements

S/N	Principle	Some dos and don'ts of lease agreement clauses	Permitted Deviation
5.	Sales performance	Landlords are generally prohibited from inserting sales performance clauses which penalise the tenant when sales targets are not met by the tenant.	In exceptional cases, parties may mutually agree on a sales performance clause, wherein the landlord must submit a declaration of permitted deviation to the FTIC.
6.	Material adverse change	Landlords and tenants are encouraged (but not required) to re-negotiate the lease agreement when the tenant is prevented from performing its typical business activity due to events beyond the tenant's control (e.g. store closure due to public health regulations).	NIL
7.	Pre-termination by tenants	<p>Tenants must be allowed to pre-terminate the lease agreement in two exceptional cases:</p> <p>(1) The business principal of goods and/or services that the tenant sells at the premises becomes insolvent;</p> <p>(2) The tenant loses distributorship or franchise rights in relation to goods and/or services sold at the lease premises through no fault of the tenant's (i.e., no breach of agreement or non-performance of the agreement by the tenant).</p> <p>Note: Please refer to the sample clause provided in the Code.</p>	NIL
8.	Security deposit	<p>For qualifying leases with a floor area of up to 5,000 square feet and with a lease term of up to 3 years, the security deposit amount must generally not exceed the equivalent of 3 months' gross rent.</p> <p>Cover-all guarantee clauses which in cases of default by the tenant render virtually all persons liable, are prohibited. Tenant may choose to provide the security deposit by way of a personal guarantee, in lieu of cash or bank guarantee, subject to landlord's acceptance.</p>	In exceptional cases, the landlord and tenant may mutually agree on an alternative amount of security deposit, wherein the landlord must submit a declaration of permitted deviation to the FTIC.

Summary of Principles in the Code which apply to Tenancy Agreements

S/N	Principle	Some dos and don'ts of lease agreement clauses	Permitted Deviation
9.	Floor area alterations	<p>If the floor area of the leased premises is more than 300 square feet, the landlord must provide to each new tenant a certificate from a registered surveyor, or certified floor and building plans from the relevant authorities if both parties mutually agree.</p> <p>There must be an adjustment of the gross rent and security deposit, as well as the option of termination, if the surveyed floor area is different from the floor area originally specified in the lease agreement by certain threshold amount.</p> <p>Note: Please refer to the sample clause provided in the Code.</p>	NIL
10.	Building maintenance	Landlords must maintain the building (or part thereof) where the lease is located and be responsible for any loss or damage suffered by the tenant due to gross negligence or willful default on the part of the landlord.	NIL
11.	Rental formula	The rental formula in the lease agreement must generally be based on a single rental computation (i.e. not more than 1 way of computing the rent payable), and must not stipulate a Gross Turnover ("GTO") Rent component (i.e., rent subject to variation based on gross sales) which is more than a specified base amount (e.g. Y% of GTO above \$Z per month).	In exceptional cases, parties may mutually agree to an alternative rental formula not based on the single-rental computation, wherein the landlord must submit a declaration of permitted deviation to the FTIC.
12.	Confidentiality	The confidentiality clause must apply to both landlord and tenant. Parties may disclose the information if required by the relevant laws and authorities.	NIL
13.	Data transparency	Unless the exceptions apply, Landlords who collect sales data from tenants as part of the GTO rent formula must generally share the sales data (sale data metrics by trade category) with the prospective tenant before signing the lease agreement, and twice yearly during the lease duration.	NIL

The abovementioned principles are non-exhaustive; it would be prudent to seek the necessary legal advice to ensure that your tenancy agreement is in compliance with the Code.

What Landlords and Tenants Can Do In The Event Of Dispute

Landlords and tenants may file a complaint with an authorised dispute resolution body (“ADSB”) (i.e. the Singapore Mediation Centre) specifying that there has been non-compliance with the leasing principle (s 9 of the Act). The ADSB is approved by the Minister and maintains a panel of mediators and adjudicators.

Parties must attend mediation with a mediator appointed by the ADSB (s 11 of the Act). If mediation is unsuccessful, the party that filed the complaint may apply to the ADSB for adjudication (s 12 of the Act).

If the adjudicator determines that there is non-compliance with the Code, the adjudicator will further determine whether the lease agreement must be varied to correct the non-compliance, or determine that compensation be provided (s 25 of the Act). Parties may apply to the General Division of the High Court to set aside the adjudication outcome (s 27 of the Act).

Conclusion

Landlords and tenants are encouraged to review the terms of their tenancy agreements and take the necessary steps to ensure that their tenancy agreements comply with the Code, or to submit to the FTIC for a declaration on the permitted deviation, according to the relevant rules and procedures.

For more information, or should you have any queries or require assistance, please feel free to contact our partner Tee Lee Lian at lltee@bihlilee.com.sg.



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