

Legal Update

New code of conduct to be introduced for fairer lease negotiations

7 April 2021

1. On 26 March 2021, the Fair Tenancy Pro Tem Committee (the "**Committee**") set up by the Singapore Business Federation ("**SBF**") introduced a Code of Conduct for Leasing of Retail Premises in Singapore (the "**Code**"). The Code aims to provide a set of mandatory guidelines for landlords and tenants of qualifying retail premises to ensure fair and balanced lease negotiations, to develop a governance framework to ensure compliance by the industry, and to introduce an accessible dispute resolution framework.
2. Whilst the Committee has recommended the Government enforce compliance with the Code through legislation, the adoption of the Code is currently voluntary. Notwithstanding this, members of the Committee have committed to adopt and abide by the Code with effect from 1 June 2021.



Application of the Code

3. The Code applies to all Qualifying Retail Premises (the "**Premises**") that is defined to include premises which are:
 - (a) held under a lease agreement entered into on or after 1 June 2021 with a tenure of more than one year; and
 - (b) permitted to be used by the Urban Development Authority and relevant authorities for uses including food and beverage outlets, retail shops, medical/dental/aesthetic clinics, pet boarding/pet shops, commercial schools, sports and recreation facilities, and places of entertainment.
4. Such Premises further includes those housed in standalone commercial buildings such as shopping centres, office buildings, mixed-use developments, shop houses, MRT stations, bus interchanges and airports.
5. Whilst covering a broad spectrum of retail premises, it should be noted that the Code does not equally apply to lease agreements for office premises.



Mandatory Leasing Principles for Key Tenancy Terms

6. The Code sets out leasing principles for 11 key tenancy terms ("**Leasing Principles**") which includes both mandatory requirements and areas of best practices that have been identified by the Committee. These Leasing Principles broadly consider:
 - (a) Exclusivity Clauses;
 - (b) Costs to Prepare the Lease Agreement and Third Party Costs;
 - (c) Advertising and Promotion Charge and Service Charge;
 - (d) Pre-termination by Landlord due to Landlord's Redevelopment Works;
 - (e) Sales Performance Clauses;
 - (f) Material Adverse Change;
 - (g) Pre-Termination by Tenants;
 - (h) Security Deposit;
 - (i) Floor Area Alterations;
 - (j) Building Maintenance; and
 - (k) Rental Structure.

7. Examples of issues addressed amongst the Leasing Principles include:
 - (a) The requirement for landlords and tenants to base rental formulas on a single computation throughout the lease term, instead of an “either/or, whichever is higher” formula;
 - (b) Subject to certain conditions, the entitlement for tenants to terminate leases early under exceptional circumstances such as their business principal going insolvent or where the retailer loses the distributorship or franchise rights to provide a good or service through no fault of theirs; and
 - (c) A general prohibition against the inclusion of exclusivity clauses including those that restrict or prevent a tenant from opening a branch or franchise within a certain radius or those that restrict or prevent a landlord from leasing premises with a similar trade or business in the same building as the tenant’s shop.
8. Whilst compliance with the Code is expected, parties who wish to deviate from the Leasing Principles can do so by issuing a joint declaration by both parties on the relevant deviation to the Fair Tenancy Industry Committee (“**FTIC**”) within 14 days after the execution of the lease agreement.



Dispute Resolution & Enforcement of the Code

9. Landlords and tenants are expected to comply with the Leasing Principles and landlords are further required to complete a checklist confirming their compliance with the Code. This checklist is to be provided together with the first draft of the lease agreements to the tenant.
10. In the event of non-compliance by the landlord or the tenant with the Code during lease negotiations, either party may refer to the FTIC. The FTIC will monitor the incidence of non-compliance by the landlord or the tenant. If there are many reports made against a particular party, the FTIC may “name and shame” the party for acting in a manner that is against the Code and the spirit of the fair tenancy framework.
11. In the event of any non-compliance in the lease agreement by the landlord or the tenant with the Code after the lease agreement is signed, either party may escalate the matter to the Singapore Mediation Centre (“**SMC**”) within 14 days of the signing of the lease agreement to resolve the dispute or disagreement. If the matter is escalated to SMC, the landlord and the tenant must attend the mediation session(s) and comply with the resolutions of the SMC.



The Code’s Impact on Parties

12. The Code was developed with the aim of levelling the playing field in the retail leasing space as tenants have long complained that it has been tilted to the advantage of landlords. This has been further heightened against the backdrop of the COVID-19 pandemic’s unprecedented impact on the retail industry. There have been numerous reports of tussles between landlords and tenants for rental relief arising from the legislative measures implemented by the Government over 2020. As a result, some landlords have been cast in a bad light for abusing their powers in refusing to lower rents or passing down rental rebates and waivers to financially distressed tenants.
13. Against this context, compliance with these new standards for future lease negotiations will inevitably result in the requirement for added due diligence and thereby additional costs incurred by the landlord in preparing and administering lease agreements. Nonetheless, a landlord’s compliance with the Code would certainly boost their reputation as being responsible making them more attractive to potential tenants looking to enter a new lease.
14. Please do not hesitate to contact us if you have any further queries.

SBF's press release for the Code dated 26 March 2021 can be accessed [here](#).

A copy of the Code dated 26 March 2021 can be accessed [here](#).

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