

Amendments to The Code of Conduct for Leasing of Retail Premises in Singapore (Version 3 dated 1 November 2023)

The following table highlights the amendments to the Code of Conduct for Leasing of Retail Premises in Singapore (Version 2 dated 15 March 2022) with the changes underlined. The amended Code of Conduct (Version 3 dated 1 November 2023) shall take effect from 01 February 2024.

Leasing Principle	Paragraph	Amendment
-	Introduction	<p>One of the objectives of the Fair Tenancy Pro Tem Committee is to jointly develop a Code of Conduct for Leasing of Retail Premises (“Code of Conduct”) to set out clear leasing guidelines and negotiation principles for landlords and tenants of <u>retail premises in Singapore leased or to be leased under a qualifying lease.</u></p> <p>The table in Part C is retitled as: <u>Leasing Principles for Confidentiality Clauses and Data Transparency.</u></p> <p><u>This edition of the Code of Conduct has effect from and including 1 February 2024 (the “Effective Date”) and applies to all qualifying leases signed on or after the Effective Date. This edition of the Code of Conduct shall supersede all previous editions of the Code of Conduct without affecting the applicability of such previous editions of the Code of Conduct which had been then applicable to all qualifying leases entered into prior to the Effective Date.</u></p> <p><u>This Code of Conduct is to be read together with the Lease Agreement for Retail Premises Act 2023 (the “Act”, which shall include all subsidiary legislation made thereunder). In the event of any inconsistency with the Act, the provisions of the Act shall prevail to the extent of the inconsistency.</u></p>
	Objectives of the Code of Conduct	<p>The key objectives of this Code of Conduct are:</p> <p>2.1 to provide guidance to landlords and tenants of <u>retail premises in Singapore to be leased under a qualifying lease in lease negotiations and for the inclusion of certain terms in qualifying leases, to ensure a fair and balanced position between landlords and tenants;</u> and</p> <p>2.2 to <u>set out the process for the resolution of disputes between</u> landlords and tenants <u>relating to</u> compliance by</p>

		<p>landlords and tenants and provide an accessible dispute resolution framework for both landlords and tenants <u>with this Code of Conduct</u>, recognising that landlords and tenants share a symbiotic interest in building and maintaining a long term and productive partnership.</p>
-	Application of this Code of Conduct	<p>3.1 <u>This Code of Conduct applies to all qualifying leases in Singapore, In this Code of Conduct:</u></p> <p>3.1.1 <u>“Qualifying lease” means a lease for retail premises (as described below), or an extension or a renewal of such lease, where –</u></p> <p>(a) <u>the agreement for the lease, extension or renewal (as the case may be) is signed on or after 1 February 2024 and</u></p> <p>(b) <u>the period of the lease or the period of the extension or renewal (as the case may be) is or exceeds one year.¹</u></p> <p>3.1.2 <u>“lease” includes a licence, a sub-lease and a sub-licence.</u></p> <p>3.1.3 <u>“lease agreement” means the agreement between a landlord and a tenant for a qualifying lease.</u></p> <p>3.2 <u>Premises are “retail premises” if they are used primarily for any of the following:</u></p> <p>(a) <u>for the sale of goods by retail;</u></p> <p>(b) <u>for the supply of services,</u></p> <p><u>including, without limitation, any of the uses set out in the table at paragraph 3.5 below.</u></p> <p>3.3 <u>Despite paragraph 3.2 above, the premises mentioned in paragraph 3.2(b) are not retail premises if they are used primarily for the purpose of conducting</u></p>

		<p><u>administrative work in connection with the supply of services.</u></p> <p>3.4 This Code of Conduct applies to all <u>retail premises</u> in Singapore located in, without limitation, 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.</p> <p>3.5 <u>The following table sets out examples of retail premises which are for reference and illustrative purposes only and are not intended to be exhaustive.</u></p> <p>The table header is retitled from “Qualifying Retail Premises Uses” to “<u>Use Category</u>”.</p> <p>Footnote updated: <u>¹For the purpose of determining whether the period of a lease is one year, any period provided in the lease agreement for which the lease may be extended or renewed or further extended or renewed, is to be disregarded.</u></p>
-	<p>Application of this Code of Conduct,</p> <p>Use Category - Table Examples</p>	<p><u>Canteen removed</u> from the list of examples cited for Restaurants.</p> <p><u>Walk-In Bank Branches</u> added to the list of examples cited for Shop.</p> <p><u>References excluding primary school, secondary school, junior college, vocational and technical institution, polytechnic and university have been removed from the list of examples cited for Commercial School.</u></p>
	[Part A] Conduct And Spirit Of Negotiations	The following overarching principles apply in guiding landlords and tenants in the conduct of negotiations of <u>qualifying leases</u> :
	[Part B] Introductory Paragraph / i/ii/iii	In furtherance of the objective of this Code of Conduct as set out in Section 2.1 above, Part B of this Code of Conduct sets out the 11 leasing principles for key tenancy terms (<u>and Part C of this Code of Conduct sets out leasing principles for confidentiality clauses</u>

and data transparency (collectively, **“Leasing Principles”** and each a **“Leasing Principle”**) which have been identified by the Fair Tenancy Pro Tem Committee.

Where a Leasing Principle provides that:

- (i) landlord or tenant must (a) do or carry out an act or thing, it is a mandatory requirement under this Code of Conduct to do or carry out such act or thing to or (b) not do, permit or allow any act or thing to be done, it is a mandatory requirement under this Code of Conduct not to do, permit or allow such act or thing, and any deviation from such mandatory requirement cannot be made unless the relevant Leasing Principle in this Code of Conduct expressly allows for such deviation with the agreement of both parties to the lease agreement;
- (ii) landlord or tenant may (a) do or carry out an act or thing, it is permissible or allowable under this Code of Conduct to do or carry out such act or thing, or (b) not do, permit or allow any act or thing to be done, it is permissible or allowable under this Code of Conduct not to do, permit or allow any act or thing to be done; and
- (iii) landlord or tenant should (a) do or carry out an act or thing, it is a best practice (although not mandatory) under this Code of Conduct to do or carry out an act or thing or (b) not do, permit or allow any act or thing to be done, it is a best practice (although not mandatory) under this Code of Conduct not to do, permit or allow any act or thing to be done.

		Please refer to Part D (Dispute Resolution and Enforcement of Code of Conduct) of this Code of Conduct in the event of any non-compliance by landlord or tenant with the Leasing Principles in Part B <u>and/or Part C</u> of this Code of Conduct.
Exclusivity	[Part B] 1.1/1.2/1.3	<p>1.1 As a general rule, exclusivity clauses (e.g. any provision which prevents or restricts a tenant from opening a branch or franchise within a certain radius of the <u>retail premises leased or to be leased under a qualifying lease</u> or which prevents or restricts a landlord from leasing premises with a similar trade or business in the same building where the <u>retail premises leased or to be leased under a qualifying lease</u> are located), whether during or after the end of the lease term, must not be included in the lease agreement.</p> <p>1.2 On an exceptional basis, if both parties agree to include an exclusivity clause in the lease agreement, such an exclusivity clause in the lease agreement <u>may</u> be included.</p> <p>1.3 <u>Landlord must submit the declaration of permitted deviation on the inclusion of the exclusivity clause to FTIC within 14 days (or such other period as may be prescribed by the Act) after the lease agreement has been signed by both parties. In the event landlord fails to submit the declaration of permitted deviation to FTIC in accordance with the requirements of the Act, such exclusivity clause in the lease agreement is deemed to be null and void (without affecting the other provisions of the lease agreement) notwithstanding that landlord and tenant have agreed to the inclusion of such exclusivity clause in the lease agreement.</u></p>
Costs to Prepare the Lease Agreement and Third-Party Costs	[Part B] 2.1/2.2/2.2.2/2.2.3	2.1 General Principles on all Costs: Landlords and tenants must abide by the following general principles in respect of all costs incurred or to be

		<p>incurred in connection with the qualifying lease.</p> <p>2.2 Point-of-Sales system (POS system): In instances where <u>landlord requires integration between landlord's POS system and tenant's POS system, the following principles must be included in the lease agreement:</u></p> <p>2.2.2 <u>To enable tenant to share sales data with landlord during the lease term:</u></p> <p>(i) <u>If tenant's existing POS system is compatible for integration with landlord's POS system, the costs and expenses for the ad-hoc POS integration (including software) of tenant's POS system with landlord's POS system must be borne by tenant and landlord on a 50:50 cost sharing basis, unless landlord and tenant agree to each pay its own vendor for the costs and expenses for the ad-hoc POS integration (including software) of tenant's POS system with landlord's POS system.</u></p> <p>(ii) If tenant's existing POS system is not compatible for integration with landlord's POS system and tenant has to purchase a new POS system in order to integrate with landlord's POS system, (a) the costs and expenses for the purchase of such new POS system must be borne by tenant and landlord on a 50:50 cost sharing basis and (b) the costs and expenses for the ad-hoc POS integration (including software) of tenant's new POS system with landlord's POS system must be borne by tenant and landlord on a 50:50 cost sharing basis, <u>unless landlord and tenant agree to each pay its own vendor for the costs and expenses for the ad-hoc POS integration (including software) of tenant's new POS system with landlord's POS system.</u></p> <p>2.2.3 New tenants² must purchase a POS system which is compatible for integration with</p>
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<p>Costs to Prepare the Lease Agreement and Third-Party Costs</p>	<p>[Part B] 2.3.1/2.3.2/2.3.3/ 2.3.4/2.3.5/2.3.6</p>	<p>2.3.1 Each of landlord and tenant must have the flexibility to appoint its own lawyers. Landlord must not <u>require</u> tenant to use any specific panel of lawyers.</p>

		<p>2.3.2 If there are no amendments to landlord's standard lease template that is compliant with this Code of Conduct, landlord must prepare the lease agreement at its own costs as part of its business operations and <u>landlord must not require any legal fees or administrative fees to be payable by tenant to landlord for the preparation of the lease agreement.</u></p> <p>2.3.3 If tenant asks for amendments to be made to landlord's standard lease template which is compliant with this Code of Conduct (including any amendment to include a Leasing Principle from this Code of Conduct which landlord has indicated in the Checklist as being "not applicable"), tenant must bear <u>(a) at landlord's option, either the legal fees or administrative fees (but not both) of landlord and (b) its own legal fees</u> associated with such amendments. If tenant requests for a Leasing Principle from this Code of Conduct to be included in the lease agreement, landlord must include such Leasing Principle from this Code of Conduct in the lease agreement.</p> <p>2.3.4 If tenant asks for amendments to be made to landlord's standard lease template which is not compliant with this Code of Conduct to address any provisions which deviate from this Code of Conduct, landlord must bear <u>(a) at tenant's option, either the legal fees or administrative fees (but not both) of tenant and (b) its own legal fees</u> associated with such amendments.</p> <p>2.3.5 <u>The lease agreement must contain provisions reflecting the applicable Leasing Principle set out in paragraph 2.3.3 or paragraph 2.3.4 (whichever is applicable).</u></p> <p>2.3.6 In the event the first draft lease agreement is prepared by tenant, all references to "tenant" <u>is deemed to refer to "landlord"</u>, and all references to "landlord" <u>is deemed to refer to "tenant" in:</u></p> <p>(i) <u>this paragraph 2.3.6 of Part B of this Code of Conduct;</u></p>
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Costs to Prepare the Lease Agreement	[Part B] 2.4	<p>2.4 <u>If landlord intends to charge tenant, at landlord's option, either administrative fees or legal fees (but not both) for the preparation of ancillary documents arising from tenant-initiated requests, (i) landlord is entitled to do so and (ii) landlord must inform in writing tenant of such administrative fees or legal fees upfront upon receipt of tenant's request. The lease agreement must contain provisions reflecting this Leasing Principle if at the time of preparation of the lease agreement, there are such ancillary documents arising from tenant-initiated requests.</u> Examples of such ancillary documents include, but not limited to, side letters, <u>variation</u> letters, —settlement agreement, novation agreement, supplemental agreement and surrender agreement.</p>
Third-Party Costs	[Part B] 2.5.2	<p>2.5.2 Sales Audit Fees: Landlord <u>must not</u> require tenants to conduct sales audit <u>unless</u> the rent payable to landlord comprises a variable component based on tenant's gross sales or gross turnover ("GTO Rent"). In such cases <u>where the rent payable to landlord comprises GTO Rent and landlord requires tenants to conduct sales audit,</u> the following principles <u>must be included in the lease agreement:</u></p> <p>(i) If tenant's POS system is integrated to landlord's POS system:</p> <p>(a) In place of an annual audited sales report submission, <u>subject to paragraph (b) below,</u> tenant must be allowed to provide an upfront monthly undertaking by tenant's director or Certified Public Accountant (CPA) on the accuracy of sales submission concurrently with tenant's monthly sales submission together with an annual statutory declaration by tenant's director.</p>

		<p>(b) However, landlord may request for tenant to submit an annual audited sales report. In which case, landlord's right to make such request must be set out in the lease agreement together with the requirement <u>that</u> landlord and tenant <u>must</u> share the costs of such annual audited sales report on 50:50 basis.</p> <p>(ii) If tenant's POS system is not integrated to landlord's POS system:</p> <p>Tenant must comply with landlord's requirements for sales <u>to be verified</u> as set out in the lease agreement. If landlord requires for an annual sales audit to be conducted and submission of an annual audited sales report, tenant must bear the full costs of such annual sales audit.</p> <p>In all other cases where the rent payable to landlord does not comprise GTO Rent, landlords <u>must</u> not require tenants to conduct sales audit <u>and the lease agreement must not include a provision requiring tenant to conduct sales audit.</u></p>
Third-Party Costs	[Part B] 2.5.3	<p>2.5.3 <u>The lease agreement must not include a provision requiring tenant's public liability insurance coverage limit to be more than S\$3 million or the public liability insurance coverage limit in landlord's public liability insurance policy, whichever is lower. This paragraph 2.5.3 does not apply to <u>premises leased or to be leased under a qualifying lease</u> which have a floor area of more than 15,000 square feet.</u></p>
Third-Party Costs	[Part B] 2.5.4	<p><u>(i) If landlord is on the En-bloc Contestability Scheme (ECS), the following principles must be included in the lease agreement:</u></p> <p><u>(ii) If landlord is not on ECS, the following principles must be included in the lease agreement:</u></p> <p>(a) Tenants must be allowed to choose their own open electricity market (OEM) retailers as long as the</p>

		existing physical infrastructure of the building <u>is able to support this.</u>
Advertising and Promotion Charge and Service Charge	[Part B] 3.2	3.2 <u>The lease agreement must provide that landlord is entitled to adjust the service charge and/or the A&P charge during the lease term, provided that the overall gross rent payable by tenant during the lease term, after such adjustment in the service charge and/or the A&P charge, does not increase.</u>
Pre-termination by Landlord due to Landlord's Redevelopment Works	[Part B] 4/4.1/4.3/4.5/4.7/4.8/4.9/4.10	<p>4 <u>In the event landlord requires a right to pre-terminate the lease due to redevelopment works, the lease agreement must include the matters set out in this Leasing Principle i.e., the lease agreement must contain, among others, provisions granting landlord such right of pre-termination, and for tenant's right to compensation, in accordance with this paragraph 4 of Part B of this Code of Conduct.</u></p> <p>4.1 <u>Landlord is only entitled to pre-terminate the lease of any premises, on the ground of redevelopment works, if landlord intends to carry out substantial redevelopment, asset enhancement or reconfiguration works to the building or part of the building where such premises are located for any reason (including changing the tenant mix in the building) ("redevelopment works") and requires vacant possession of such premises in order to carry out such redevelopment works. Landlord must not be entitled to pre-terminate the lease purely for the purposes of changing the tenant mix in the Building without carrying out any redevelopment works or if landlord is able to carry out such redevelopment works without requiring vacant possession of such premises.</u></p> <p>4.2 <u>Landlord must give no less than 6 months' prior written notice to tenant if landlord wishes to pre-terminate the lease by reason of the proposed redevelopment works, save where the proposed redevelopment works are required to be carried out pursuant to any prevailing laws, orders, directions, by-</u></p>

		<p>laws, codes, rules, regulations, notices or requirements of the authorities (“Requirements”) and the time period given to landlord to comply with such Requirements is of such duration that landlord is unable to give tenant the requisite 6 months’ prior written notice. Landlord must give the <u>pre-termination</u> notice to tenant promptly and without undue delay as soon as landlord is aware of such Requirements.</p> <p>4.3 In the interest of transparency, where landlord has obtained Written Permission (WP) from URA for any asset enhancement initiative (AEI) works, landlord must inform tenant of such proposed AEI works prior to signing of the lease agreement. If landlord fails to do so, and the lease is pre-terminated by landlord by reason of the proposed redevelopment works, <u>landlord must pay</u> an additional compensation sum to tenant on top of the compensation sums payable under paragraph paragraph 4.4 or paragraph 4.5 below upon landlord’s pre-termination of the lease. Landlord and tenant <u>must, each acting reasonably, have discussions in good faith</u> to agree on the amount of the additional compensation sum.</p> <p>4.5 <u>Landlord must not be required to pay</u> to tenant <u>any compensation</u> if the lease is pre-terminated during any renewal term(s) unless tenant has carried out the Tenant’s Renewal Capex Works which has been agreed between landlord and tenant to form part of the Tenant’s Renewal Capex Works for the purpose of computing the Agreed Declared Value. If tenant has carried out the Tenant’s Renewal Capex Works and the renewal term is pre-terminated by landlord by reason of the proposed redevelopment works, landlord must pay tenant a compensation sum calculated based on the Agreed Declared Value of the Tenant’s Renewal Capex Works less depreciation on such Agreed Declared Value amortised on a <u>straight-line</u> basis across the entire period of the renewal term.</p>
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		<p>Value by landlord (acting reasonably) as being the Agreed Declared Value.</p> <p>4.9 <u>Despite the definition of “Agreed Declared Value” in paragraph 4.6.1 above and without affecting paragraph 4.8 above, landlord <u>may accept</u> the estimated <u>value</u> of Tenant’s Capex Works as the Agreed Declared Value. <u>If landlord so accepts</u>, landlord <u>must notify</u> tenant in writing of its acceptance of the estimated <u>value</u> of Tenant’s Capex Works as the Agreed Declared Value and the requirements of paragraph 4.8 <u>is waived</u>. In such a case, the “Agreed Declared Value” <u>refers</u> to the estimated <u>value</u> of the Tenant’s Capex Works as accepted by landlord hereunder.</u></p> <p>4.10 If the lease is pre-terminated by landlord by reason of the proposed redevelopment works, tenant <u>must</u> not be required to reinstate the premises on <u>such pre-termination</u> but tenant must remove all tenant’s signs, moveable items, furniture and belongings from the premises and deliver the premises and landlord’s installations to landlord in a clean state and in a condition which does not pose any threat to health, safety and the environment. Tenant must make good all damage caused to the building where the premises are located resulting from such removal.</p>
Sales Performance	[Part B] 5.2/5.3	<p>5.2 On an exceptional basis, if both parties agree to include a sales performance clause <u>in</u> the lease agreement, such sales performance clause <u>may be included</u> in the lease agreement.</p> <p>5.3 <u>Landlord must submit a declaration of permitted deviation</u> on the inclusion of the sales performance clause to FTIC within 14 days (or such other period as may be <u>prescribed by the Act</u>) after the lease agreement has been signed by both parties. <u>In the event landlord fails to submit the declaration of permitted deviation to FTIC in accordance with the requirements of the Act, such sales performance clause in the lease agreement is deemed to be null and</u></p>

		<p><u>void (without affecting the other provisions of the lease agreement) notwithstanding that landlord and tenant have agreed to the inclusion of such sales performance clause in the lease agreement. FTIC may charge filing fees for the submission of the declaration of permitted deviation in such amounts as may be specified by FTIC on its website from time to time, and landlord and tenant must share the filing fees on 50:50 basis.</u></p>
Material Adverse Change	[Part B] 6	<p>While not mandatory, landlord and tenant <u>should</u> re-negotiate the lease agreement in cases where tenant is prevented, obstructed or hindered from performing its typical business activity at the leased premises due to events beyond tenant's control e.g. compliance with the requirements of any law, regulation, by-law or requirements of a public authority (including but not limited to store closure due to public health interest).</p>
Pre-termination by Tenants	[Part B] 7/7.1/7.2/7.3	<p>7 <u>In</u> the event tenant requires a right to pre-terminate the lease due to exceptional conditions, the lease <u>agreement must include the matters set out in this Leasing Principle, i.e.,</u> the lease agreement must contain, <u>among others,</u> provisions granting tenant such right of pre-termination, <u>and for landlord's right to compensation,</u> in accordance with <u>this</u> paragraph 7 of Part B of this Code of Conduct.</p> <p>7.1 Tenant <u>must be allowed</u> to pre-terminate the lease upon the occurrence of either of the following two exceptional conditions ("exceptional conditions"):</p> <p>7.2 Tenant must give no less than 6 months' prior written notice or opt to pay 6 months' gross rent in lieu of the 6 months' notice period to landlord if tenant wishes to terminate the lease by reason of the occurrence of either of the exceptional conditions. Tenant <u>must also be allowed</u> to shorten the 6 months' notice period by paying an amount equivalent to the gross</p>

		<p>rent for the unfulfilled notice period, capped at 6 months' gross rent.</p> <p>7.3 <u>Tenant must pay to landlord a compensation sum equivalent to the security deposit amount for any pre-termination of the lease by tenant by reason of the occurrence of either of the exceptional conditions. Landlord must be allowed to apply the entire security deposit towards the compensation sum on the termination of the lease and any shortfall must be made good by tenant. The termination of the lease agreement and the payment of the compensation sum must not affect any outstanding amounts owing by tenant to landlord under the lease agreement.</u></p>
<p>Security Deposit</p>	<p>[Part B] 8.1/8.2/8.3/8.4</p>	<p>8.1 <u>As a general rule, the lease agreement must not provide for a security deposit amount that exceeds an amount equal to 3 months' gross rent for the retail premises leased under a qualifying lease with a floor area of up to 5,000 square feet and with a lease term of up to 3 years. For the purpose of this paragraph 8:</u></p> <p>8.1.1 where the rent payable to landlord comprises GTO Rent, "gross rent" may include the projected GTO Rent as may be agreed between landlord and tenant; and</p> <p>8.2.2 for escalating or staggered rental <u>formulas</u>, "gross rent" may be calculated based on the lowest, average or highest rent rate payable during the lease term, as may be agreed between landlord and tenant.</p> <p>8.2 <u>On an exceptional basis, landlord and tenant may mutually agree to alternative security deposit amount for such qualifying lease to be stated in the lease agreement. In such cases, landlord must submit a declaration of permitted deviation on the alternative security deposit amount to FTIC within 14 days (or such other period as may be prescribed by the Act) after the lease agreement has been signed by both parties. In the event</u></p>

		<p><u>landlord fails to submit the declaration of permitted deviation to FTIC in accordance with the requirements of the Act, the security deposit amount required under the lease agreement is deemed to be 3 months' gross rent, notwithstanding that landlord and tenant have agreed to an alternative security deposit amount in the lease agreement.</u></p> <p>8.3 Paragraph 8.1 and paragraph 8.2 of Part B of this Code of Conduct do not apply to <u>retail premises leased under a qualifying lease</u> which have a floor area of more than 5,000 square feet <u>and/or</u> has a lease term of more than 3 years. Paragraph 0 and paragraph 0 of Part B of this Code of Conduct also do not apply if the amount equal to 3 months' gross rent is equal to or less than S\$500.</p> <p>8.4 If tenant <u>wishes to provide the security deposit by way of a non-cash mode (for example, an 'on demand' bank guarantee issued by a reputable financial institution in Singapore)</u>, tenant must notify landlord upfront prior to signing of the lease agreement, and <u>the lease agreement must include a term allowing tenant to furnish up to 50% of the security deposit by way of a non-cash mode of payment, and in a format, of landlord's choosing.</u></p>
Floor Area Alterations	[Part B] 9.2/9.3/9.4	<p>9.1 For each new letting (excluding renewals of the same premises), <u>the lease agreement must provide that landlord provides to tenant a certificate from the registered surveyor confirming the surveyed area of the retail premises leased under a qualifying lease prior to handover (or such later date as landlord and tenant may agree).</u></p> <p>9.2 <u>Instead of a certificate from the registered surveyor confirming the surveyed area of the retail premises leased under a qualifying lease, landlord and tenant may mutually agree to accept certified floor plans or</u></p>

		<p><u>building plans from relevant authorities (i.e. HDB, URA, BCA) which indicates the floor area of the retail premises leased under a qualifying lease.</u></p> <p>9.3 <u>The lease agreement must provide for such agreement of landlord and tenant as set out in paragraph 9.2 or paragraph 9.3.</u></p> <p>9.4 <u>If the floor area of the premises specified in the lease agreement is equal to or less than 300 square feet, the requirements of this paragraph 9 do not apply.</u></p>
<p>Floor Area Alterations</p>	<p>[Part B] 9.5/9.6/9.6.1/9.6.2</p>	<p>9.5 For premises which have been formed or re-configured after redevelopment of the building or completion of AEI works, <u>the lease agreement must provide that</u> landlord must cause a re-survey of the premises to be carried out by a registered surveyor and provide <u>to tenant</u> a certificate from the registered surveyor confirming the surveyed area of the premises prior to handover (or such later date as landlord and tenant may agree).</p> <p>9.6 <u>The lease agreement must provide that if</u> the surveyed floor area is larger than the floor area originally specified in the lease agreement:</p> <p style="padding-left: 40px;">9.6.1 if the difference is more than 5%, there <u>must</u> be an upward adjustment of gross rent and security deposit (and all other amounts payable in the lease agreement that are affected by the floor area of the premises) capped at 5%; and</p> <p style="padding-left: 40px;">9.6.2 if the difference is 5% or less, there <u>must</u> be an upward adjustment of gross rent and security deposit (and all other amounts payable in the lease agreement that are affected by the floor area of the premises) based on the surveyed floor area.</p>

<p>Floor Area Alterations</p>	<p>[Part B] 9.7/9.7.1/9.7.2/9.7.3/9.7.4/9.7.5</p>	<p>9.7 <u>The lease agreement must provide that if the surveyed floor area is smaller than the floor area originally specified in the lease agreement:</u></p> <p>9.7.1 if the difference is 10% or less, there <u>must</u> be a downward adjustment of gross rent and security deposit (and all other amounts payable in the lease agreement that are affected by the floor area of the premises) based on the surveyed floor area; and</p> <p>9.7.2 if the difference is more than 10%, each of landlord and tenant <u>must be allowed to terminate the lease agreement without liability</u> (save as otherwise provided in this paragraph 9.7) by giving written notice to the other party within one month after landlord has provided the certificate from the registered surveyor to tenant.</p> <p>9.7.3 If, at the time of the termination of the lease agreement, tenant has not taken possession of the premises, the lease agreement <u>is</u> deemed null and void from the beginning with the intent that each of landlord and tenant <u>is</u> put in the same respective position as if the lease agreement was not entered into. In this connection:</p> <ul style="list-style-type: none"> (i) tenant <u>must</u> not be required to reinstate the premises as tenant has not taken possession of the premises; and (ii) landlord <u>must</u> refund all monies paid by tenant to landlord pursuant to the lease agreement without interest (including any rent, service charge, A&P charge, security
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deposit and other deposits but excluding stamp duties and legal fees (if any)).

9.7.4 If, at the time of the termination of the lease agreement, tenant has taken possession of the premises and:

(i) the lease agreement is terminated by landlord pursuant to a written notice given by landlord pursuant to paragraph 9.7.2 above, the lease agreement is deemed null and void from the beginning with the intent that tenant is put in the same position as if the lease agreement was not entered into. In this connection:

(a) tenant must not be required to reinstate the premises and must promptly deliver up possession of the premises to landlord; and

(b) landlord must refund all monies paid by tenant to landlord pursuant to the lease agreement without interest (including any rent, service charge, A&P charge, security deposit and other deposits but excluding stamp duties and legal fees (if any) and

		<p>(c) landlord <u>must</u> pay a compensation sum equivalent to the amount actually incurred by tenant for the Tenant's Capex Works prior and up to the date of landlord's notice of termination under paragraph <u>9.7.2</u> above, as evidenced by invoices provided by tenant to landlord for verification and validation <u>or</u></p> <p>(ii) the lease agreement is terminated by tenant pursuant to a written notice given by tenant pursuant to paragraph <u>9.7.2</u> above, tenant must promptly reinstate the premises and deliver up possession of the premises to landlord properly reinstated in accordance with the provisions of the lease agreement and the lease agreement <u>is</u> deemed terminated on the date of such delivery of possession of the premises by tenant to landlord, without prejudice to the rights and remedies of either party against the other party in respect of any prior breach of the lease agreement by the other party. For the avoidance of doubt, all the</p>
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		<p>provisions of the lease agreement continue to apply and <u>are</u> binding on landlord and tenant until the date of the deemed termination of the lease agreement.</p> <p>9.7.5 In the event neither landlord nor tenant exercises its right to terminate the lease agreement, there <u>must</u> be a downward adjustment of gross rent and security deposit (and all other amounts payable in the lease agreement that are affected by the floor area of the premises) based on the surveyed floor area.</p>
Floor Area Alterations	[Part B] 9.8	<p>9.8 <u>The lease agreement must provide that in cases where the surveyed floor area varies from the floor area originally specified in the lease agreement and the gross rent and security deposit (and all other amounts payable in the lease agreement that are affected by the floor area of the premises) need to be adjusted, such adjustments must take place within 2 months from landlord furnishing the certificate from the registered surveyor to tenant (or such other later date as landlord and tenant may agree).</u> All adjustments pursuant to paragraph 9.6 and paragraph 9.7 of Part B of this Code of Conduct <u>is</u> with effect from the commencement date of the lease.</p>
Building Maintenance	[Part B] 10.1/10.2	<p>10.1 The lease agreement <u>must</u> contain an obligation on landlord to maintain:</p> <ul style="list-style-type: none"> (iii) the building where the leased premises are located (if landlord owns <u>the whole of</u> such building); or (iv) such part(s) of the building which are owned by landlord where the leased premises are located (if landlord does not own <u>the whole of such</u> building).

		<p>10.2 <u>The lease agreement must provide that landlord is</u> responsible for any loss or damage suffered by tenant due to the gross negligence or wilful default on the part of landlord to maintain the building or such part(s) thereof where the leased premises are located as provided in paragraph 10.1.</p>
Rental Formula	[Part B] 11.1/11.2/11.3	<p>11.1 <u>As a general rule, in a lease agreement, the rental formula must not have an “either/or, whichever is higher” formula or have a GTO Rent component when GTO Rent is more than a specified amount.</u> The rental formula must be based on a single rental computation throughout the lease term.</p> <p>11.2 On an exceptional basis, if both parties agree to an alternative rental <u>formula</u> that is not based on a single rental computation, such alternative rental <u>formula may</u> be included in the lease agreement.</p> <p>11.3 <u>Landlord must submit a declaration of permitted deviation</u> on the agreed alternative rental <u>formula</u> to FTIC within 14 days <u>(or such other period as may be prescribed by the Act)</u> after the lease agreement has been signed by both parties. <u>In the event landlord fails to submit the declaration of permitted deviation to FTIC in accordance with the requirements of the Act, FTIC may, after making its own assessment, publish any details of non-compliance with the Act or this Code of Conduct, in accordance with the Act.</u></p>
	[Part B] Schedule 1, Schedule 2, and Schedule 3	[The sample clauses in Schedule 1, 2 and 3 have been updated in accordance with the amendments to the CoC outlined above.]
Confidentiality	[Part C] Introductory Paragraph/1/1.1/1.2	<p>In furtherance of the objective of this Code of Conduct as set out in Section 2.1 above, Part C of this Code of Conduct sets out the <u>Leasing Principles relating to confidentiality clauses in lease agreements</u> and to allow for more data transparency as agreed by the Fair Tenancy Pro Tem Committee.</p> <p>1. Confidentiality</p>

		<p>1.1 Lease agreements may contain confidentiality clause requiring landlords and tenants not to share lease-related information.</p> <p>1.2 <u>If a confidentiality clause (with such exceptions as may be agreed between landlord and tenant) is included in lease agreements, it must apply to both landlord and tenant as such confidentiality clause is intended to ensure the sanctity of information exchanged between landlord and tenant in respect of the lease of the premises in a reciprocal manner, provided always that each party must be allowed to disclose any lease-related information:</u></p>
Data Transparency	[Part C] 2.1/2.2/2.3	<p>2.1 <u>This Leasing Principle only applies to landlords who collect sales data from tenants as part of the GTO Rent formula.</u></p> <p>2.2 <u>Landlords who are entitled to collect sales data from tenants as part of the GTO Rent formula under the lease agreement must share sales data metrics by trade category (i.e. total monthly sales and total floor area) on a one-on-one basis before the signing of the lease agreement. The lease agreement must provide that landlords must share such sales data on a bi-annual basis with tenants during the duration of the lease. For reasons of confidentiality, the lease agreement must provide that landlord must not be required to share sales data where the number of tenants for the relevant trade category is less than 3.</u></p> <p>2.3 <u>For tenants whose lease agreements are entered into prior to the Effective Date and who pay rent under a GTO Rent formula, landlords must share such sales data with such tenants on a bi-annual basis with effect from the Effective Date, regardless of whether or not there is an obligation to do so in the lease agreement.</u></p>
Various	[Part D] 2.1/2.2 / 3	<p>2.1 <u>In the event that a landlord or tenant fails to have regard to, or adhere with the principles (as the case may be) in Part A, Part B and/or Part C of this Code of Conduct during lease negotiations (for example, landlord unreasonably demands that tenant agree to</u></p>

		<p>a “mutually agreed” deviation), either party may <u>inform the FTIC of the matter.</u></p> <p>2.2 <u>The FTIC will monitor the incidence of occurrences of events under paragraph 2.1 above during lease negotiations. If there are reports made by either landlord or tenant (the “reporting party”) against the other party (the “other party”) for such incidents on a frequent or regular basis, FTIC may require the reporting party to provide further and better particulars and information in writing to support such reports and provide the other party with the opportunity to provide justifications or make representations in response, so as to facilitate FTIC’s functions under the Act. The FTIC shall not be liable to either landlord or tenant and neither party shall claim against the FTIC for any claims, demands, actions, proceedings, judgements, damages, losses, costs and expenses of any nature which any party may suffer or incur arising out of or in connection with the publication of any details of non-compliance with the Act or this Code of Conduct in accordance with the Act.</u></p> <p>3 <u>In the event of any non-compliance (as defined in the Act) with a Leasing Principle found in Part B and/or Part C of this Code of Conduct in relation to the lease agreement by landlord or tenant, after the lease agreement is signed, landlord and tenant must comply with the dispute resolution procedure set out in the Act, where applicable.</u></p>
	<p>[Part D] 4/ Appendix</p>	<p>3. [The process for dispute resolution and enforcement of the CoC have been updated to align with the Act] – Please refer to flow chart under Annex A1</p> <p>[The remarks under “Not Applicable” / “Code Compliant” have been updated for the following:] - Please refer to flow chart under Annex A2</p> <ul style="list-style-type: none"> • 2.5.3- Public Liability Insurance • 5 – Sales Performance

		<ul style="list-style-type: none"> • 6 – Pre-Termination by Tenants • 7- Security Deposit • 8- Floor Area Alterations • 9- Building Maintenance • 10- Rental Formula • 11- Confidentiality clauses • 12 – Data Transparency
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ANNEX A1

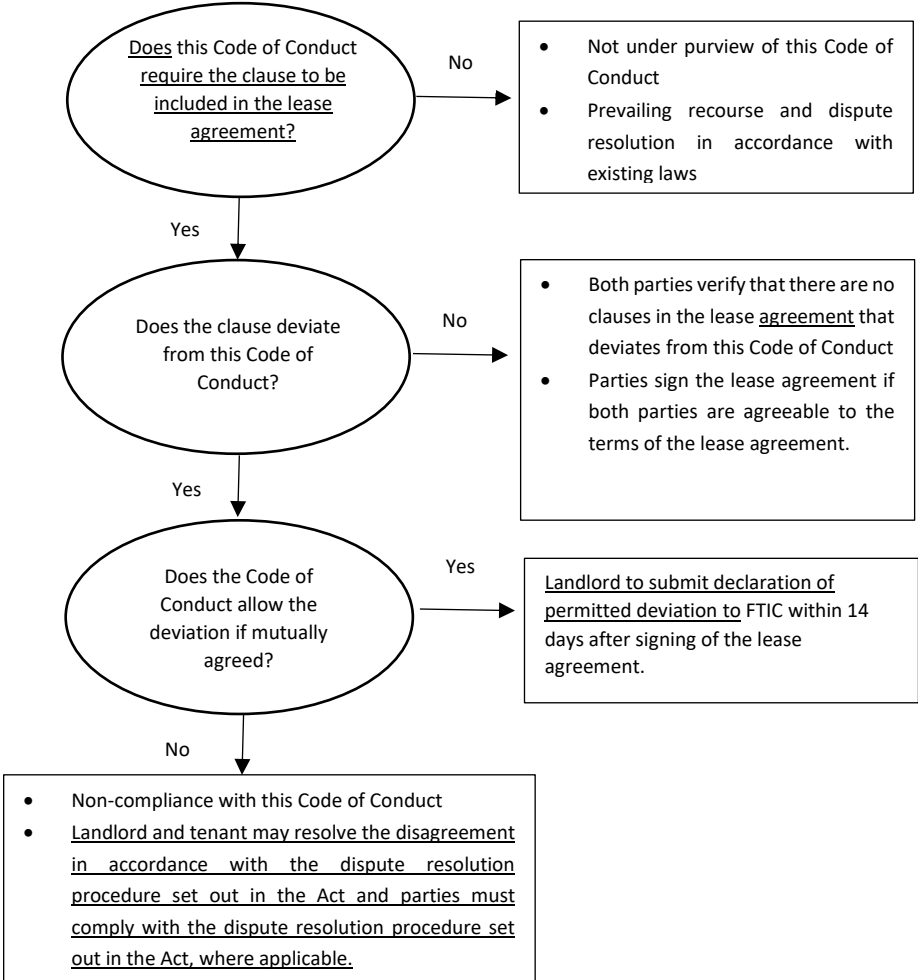
3. Process for Dispute Resolution and Enforcement of this Code

Pre-contract phase

If landlord or tenant fails to have regard to or adhere with the principles in Part A, Part B and/or Part C of this Code of Conduct during lease negotiations (for example, landlord unreasonably demands that tenant agree to a “mutually agreed” deviation), parties may inform FTIC of the matter. If there are reports made by either landlord or tenant against the other party on a frequent or regular basis, to

Post-contract phase (Within 14 days of signing of the lease agreement)

All lease agreements issued must be accompanied by a Checklist (Appendix 1 of Part D of this Code of Conduct).
 All clauses which deviate from this Code of Conduct must be flagged by landlord for tenant’s attention, or where the lease agreement is prepared by tenant, must be flagged by tenant for landlord’s attention.



**APPENDIX 1 OF PART D
CHECKLIST
(REFERRED TO IN PARAGRAPH 1.1 OF PART D)**

(Note: Landlord must complete and provide the Checklist to tenant together with the first draft of the lease agreement in respect of retail premises. Where there are any deviations in any of the Leasing Principles, landlord must indicate the same by checking the box under “Deviation” column and may include remarks under the “Remarks” section. Please ensure that one box is checked for every item in this Checklist.

The Code of Conduct allows for certain deviations in the Leasing Principles if such deviations are mutually agreed and in which case a declaration of permitted deviation must be submitted by landlord to FTIC in accordance with the Act. These are indicated with an asterisk ().*

If landlord and tenant mutually agree to the deviation, kindly initial in the two boxes below the check box. Please do not initial in the box if you do not agree to the deviation.

If a Leasing Principle is not applicable to the lease agreement, parties must indicate this by checking the box indicating that it is “Not Applicable”, e.g. if landlord does not require integration of tenant’s POS system with landlord’s POS system, the box under the “Not Applicable” section for S/N 2.2 is to be checked.)

S/N	Leasing Principle	Code - Compliant	Deviation from Code requiring submission of declaration to FTIC?	Not Applicable				
PART B OF CODE OF CONDUCT: LEASING PRINCIPLES FOR KEY TENANCY TERMS								
1.	* Exclusivity	<input type="checkbox"/> To check if there is no exclusivity clause	<input type="checkbox"/> To check if there is exclusivity clause <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; text-align: center;">Landlord</td> <td style="width: 50%; text-align: center;">Tenant</td> </tr> <tr> <td colspan="2" style="text-align: center;">To initial if deviation is agreed</td> </tr> </table>	Landlord	Tenant	To initial if deviation is agreed		-
Landlord	Tenant							
To initial if deviation is agreed								
	Remarks:							
2.	Costs to Prepare the Lease Agreement and Third Party Costs							
2.1	General Principles on all Costs	<input type="checkbox"/>	-	-				
2.2	Point-of-Sales system (POS system)	<input type="checkbox"/>	-	<input type="checkbox"/> To check if landlord does not require integration of tenant’s POS system with landlord’s POS system				
2.3	Costs to Prepare the Lease Agreement	<input type="checkbox"/>	-	-				

S/N	Leasing Principle		Code - Compliant	Deviation from Code requiring submission of declaration to FTIC?	Not Applicable	
	2.4	Fees for Tenant-Initiated Requests	<input type="checkbox"/>	-	<input type="checkbox"/> To check if there are no ancillary documents arising from tenant-initiated requests at time of lease preparation	
	2.5	Third Party Costs				
	2.5.1	General Principles on Third Party Costs	<input type="checkbox"/>	-	-	
	2.5.2	Sales Audit Fees	<input type="checkbox"/>	-	<input type="checkbox"/> To check if the rent payable to landlord does not comprise GTO Rent	
	2.5.3	Public Liability Insurance	<input type="checkbox"/>	-	<input type="checkbox"/> To check if the floor area of the leased premises is more than 15,000 square feet	
	2.5.4	Electricity Charges	<input type="checkbox"/>	-	-	
3.	Advertising and Promotion Charge and Service Charge		<input type="checkbox"/>	-	<input type="checkbox"/> To check if there is no A&P charge and no service charge payable to landlord	
4.	Pre-termination by Landlord due to Landlord's Redevelopment Works		<input type="checkbox"/>	-	<input type="checkbox"/> To check if landlord does not require the right to pre-terminate the lease for redevelopment works	
5.	* Sales Performance		<input type="checkbox"/> To check if there is no sales performance clause	<input type="checkbox"/> To check if there is sales performance clause	-	
				Landlord		Tenant
				To initial if deviation is agreed		
Remarks:						

S/N	Leasing Principle	Code - Compliant	Deviation from Code requiring submission of declaration to FTIC?	Not Applicable
6.	Pre-Termination by Tenants	<input type="checkbox"/>	-	<input type="checkbox"/> Tenant To <u>check and</u> initial above if tenant is not trading under the brand name of a principal or franchisor <u>or if tenant does not require the right to pre-terminate the lease for exceptional conditions</u>
7.	* Security Deposit	<input type="checkbox"/> To check if security deposit does not exceed 3 months' gross rent	<input type="checkbox"/> To check if security deposit exceeds 3 months' gross rent Landlord Tenant To initial if deviation is agreed	<input type="checkbox"/> To check if floor area of premises is more than 5,000 square feet and/or lease term is more than 3 years or if 3 months' gross rent is equal to or less than \$500
Remarks:				
8.	Floor Area Alterations	<input type="checkbox"/>	-	<input type="checkbox"/> To <u>check</u> if lease is a renewal lease or if the agreed floor area is equal to or less than 300 square feet
9.	Building Maintenance	<input type="checkbox"/>	-	-
10.	*Rental Formula	<input type="checkbox"/> To check if rental formula is a <u>single rental formula</u> (i.e. <u>not</u> an "either/or" formula, and <u>does not</u> have a GTO component if GTO is more than \$5Z)	<input type="checkbox"/> To check if rental formula is not a <u>single rental formula</u> Landlord Tenant To initial if deviation is agreed <u>and to select and complete the alternative agreed rental formula in the section below</u>	-
Agreed Rental Formula <input type="checkbox"/> <u>\$X psf or Y% of GTO, whichever is higher</u> <input type="checkbox"/> <u>(\$X psf + Y% of GTO) or Z % of GTO, whichever is higher</u> <input type="checkbox"/> <u>\$X psf + Y % of GTO above \$XY per month</u> <input type="checkbox"/> Others: _____				
PART C OF CODE OF CONDUCT: LEASING PRINCIPLES FOR CONFIDENTIALITY CLAUSES AND DATA TRANSPARENCY				
11.	<u>Confidentiality</u>	<input type="checkbox"/>	-	<input type="checkbox"/>

S/N	Leasing Principle	Code - Compliant	Deviation from Code requiring submission of declaration to FTIC?	Not Applicable
		To check if confidentiality clause applies to both landlord and tenant		To check if there is no confidentiality clause binding on both parties
12.	<u>Data Transparency</u>			
12.1	<u>Sharing of sales data prior to signing of lease agreement</u>	<input type="checkbox"/> To check if landlord has shared sales data prior to signing of lease agreement	-	<input type="checkbox"/> To check if landlord do not collect sales data from tenants as part of the GTO Rent formula
12.2	<u>Sharing of sales data on a bi-annual basis during the lease term</u>	<input type="checkbox"/>	-	<input type="checkbox"/> To check if landlord do not collect sales data from tenants as part of the GTO Rent formula

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