

BRIEFING FOR CODE OF CONDUCT FOR LEASING OF RETAIL PREMISES IN SINGAPORE

We are committed to create a vibrant retail industry

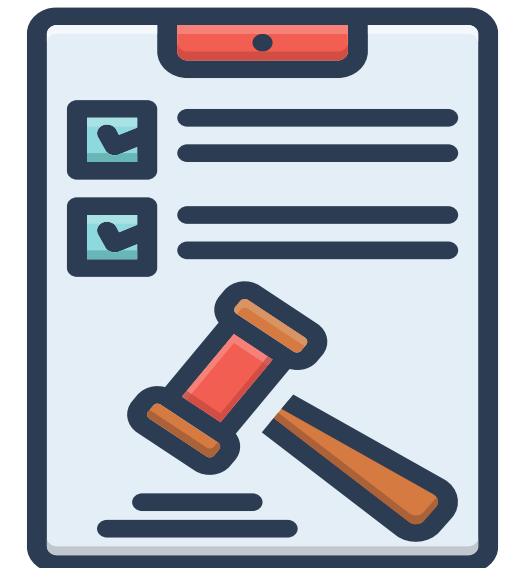
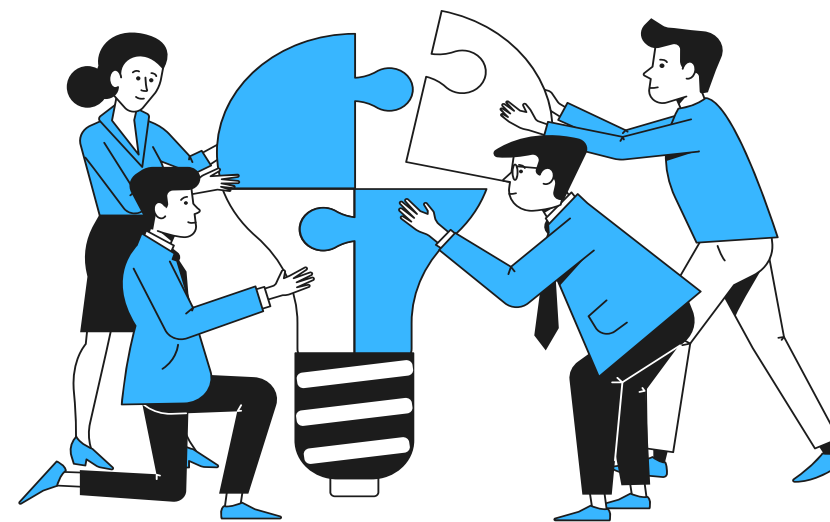
BACKGROUND

The Fair Tenancy Pro Tem Committee, which includes representatives from the landlord and tenant communities, the Government, industry experts, and academia, was established on June 26, 2020, under the auspices of SBF.

The following represents the outcomes of the Fair Tenancy Pro Tem Committee:

- Developed the Code of Conduct for Leasing of Retail Premises in Singapore (Code)
- Formation of the Fair Tenancy Industry Committee (FTIC)
- Proposed Enforceable Framework to the Government

The Fair Tenancy Committee was set up in May 2021 to be custodian of the CoC and to provide guidance to landlords and tenants.



LEASE AGREEMENTS FOR RETAIL PREMISES ACT

- The Code contains leasing principles for key tenancy terms, confidentiality clauses and data transparency.
- The Government had earlier accepted industry's recommendation to mandate compliance with the Code, which has been voluntarily adopted by major industry landlords and all Government landlords since June 2021.
- After conducting industry and public consultations on key provisions of the proposed legislation, the **Lease Agreements for Retail Premises Act** was passed by Parliament on 3 August 2023. The Act will take effect on 1 February 2024.

LEASE AGREEMENTS FOR RETAIL PREMISES ACT

The Lease Agreements for Retail Premises Act seeks to:

- mandate compliance with key leasing principles in the Code
- formally establish the FTIC's role as the custodian of the Code
- establish the dispute resolution process (i.e. mediation and arbitration), to be administered by SMC

APPLICATION OF THE CODE OF CONDUCT

- This Code of Conduct applies to all retail premises 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.



PART A: CONDUCT AND SPIRIT OF NEGOTIATIONS

Share a symbiotic interest in working together to co-create a collaborative landlord-tenant ecosystem

Must adopt a consensual approach to negotiate in good faith

Must refrain from conduct which would be regarded as commercially unacceptable or unreasonable by honest and reasonable people

Must act in an open, honest and transparent manner and each provide sufficient and accurate information

Entitled to have regard to their own commercial self-interest in the course of negotiations as long as they do not act in bad faith

PART B: LEASING PRINCIPLES FOR KEY TENANCY TERMS

The Code sets out leasing principles for 11 key tenancy terms with Part B and 2 Principles for Confidentiality and Data Transparency:

Part B:

1. Exclusivity*
2. Costs to Prepare the Lease Agreement and Third Party Costs
3. Advertising and Promotion Charge and Service Charge
4. Pre-Termination by Landlord due to Landlord's Development Works
5. Sales Performance*
6. Material Adverse Change
7. Pre-Termination by Tenants
8. Security Deposit*

9. Floor Area Alterations

10. Building Maintenance

11. Rental Formula*

Part C:

12. Confidentiality

13. Data Transparency

- * Deviation (only these 4) is permitted if mutually agreed by both parties. The landlord must submit a declaration of permitted deviation to the FTIC within 14 days after the signing of the lease agreement.
- Filing fee of \$100 per deviation excluding GST will be imposed from 1 Feb 2024

1. EXCLUSIVITY

Exclusivity clauses whether during or after the end of the lease term, must not be included in the lease agreement.

Exceptional basis

If both parties agree, exclusivity clause in the lease agreement can be included. A declaration must be made by the Landlord to FTIC within 14 days after the lease agreement has been signed by both parties. Failure to do so will render the deviation as null and void and it shall be excluded from the lease agreement.

2. COSTS TO PREPARE THE LEASE AGREEMENT AND THIRD PARTY

COSTS

Landlords and tenants must abide by the following general principles:

1. **Transparency** i.e. upfront disclosure of costs charged.
2. Fees must be **legitimate and justifiable** in order to cover real costs (e.g. labour costs in coordinating work).
3. There must be **no profiteering**.



**Part B: Leasing Principles for
Key Tenancy Terms**

2. COSTS TO PREPARE THE LEASE AGREEMENT AND THIRD PARTY

COSTS

When a landlord requires integration between their and the tenant's POS systems, the lease agreement must incorporate the following principles:

Type of Costs	Principles
Point-of-Sales system (POS system)	<ul style="list-style-type: none">• Pay for its own costs for the regular maintenance of its own POS system.• Enable tenant to share sales data with landlord:<ul style="list-style-type: none">➤ If tenant's existing POS system is compatible: costs for ad-hoc POS integration must be borne by tenant and landlord on a 50:50 cost sharing basis.➤ If tenant's existing POS system is not compatible, the additional costs for such new POS system and the costs for the ad-hoc POS integration must be borne by tenant and landlord on a 50:50 cost sharing basis.➤ New tenant: tenant to purchase a compatible POS system at tenant's cost. If cost to purchase a compatible POS system is substantially higher than a non-compatible system, costs for POS system and the costs for the ad-hoc POS integration 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.

2. COSTS TO PREPARE THE LEASE AGREEMENT AND THIRD PARTY

COSTS

Type of Costs	Principles
Costs to Prepare the Lease Agreement	<ul style="list-style-type: none">• Landlord and tenant must have the flexibility to appoint its own lawyers. Landlord must not impose on tenant to use any specific panel of lawyers.• If no amendments to landlord's lease template that is compliant with the Code, landlord must not charge any operations, legal or administrative fees• If tenant requests to include a Leasing Principle from the CoC to a code-compliant landlord lease template, tenant must bear (a) at landlord's option, either the legal fees or administrative fees (but not both) of landlord and (b) its own legal fees associated with such amendments. Landlord must include such Leasing Principle upon tenant's request.• If tenant requests an amendment to rectify landlord's lease template that is not compliant with the Code, landlord must bear (a) at tenant's option, either the legal fees or administrative fees (but not both) of tenant and (b) its own legal fees associated with such amendments.• In the event the first draft lease agreement is prepared by tenant, the same principle will apply

Part B: Leasing Principles for Key Tenancy Terms

2. COSTS TO PREPARE THE LEASE AGREEMENT AND THIRD PARTY

COSTS

Type of Costs	Principles
Fees for Tenant-Initiated Requests	<ul style="list-style-type: none">Landlord is entitled to charge tenant either administrative fees or legal fees (but not both) for the preparation of ancillary documents arising from tenant-initiated requests.

**Part B: Leasing Principles for
Key Tenancy Terms**

2. COSTS TO PREPARE THE LEASE AGREEMENT AND THIRD PARTY

COSTS

For Third Party Cost:

1. Lease agreement must not contain a “catch-all” provision
2. All third-party costs must be communicated upfront to tenant and clearly set out in the lease agreement.

Type of Costs	Principles
Sales Audit Fees	<p>Sales audit are allowed only in instances where the rent payable to landlord comprises gross turnover rent component (GTO).</p> <ul style="list-style-type: none">• If tenant’s POS system is integrated to landlord’s POS system: Allowed to provide an upfront monthly undertaking by tenant’s director or Certified Public Accountant (CPA) with an annual statutory declaration. Landlord may request for tenant to submit an annual audited sales report but landlord and tenant are to share the costs on 50:50 basis.• If tenant’s POS system is not integrated to landlord’s POS system: If landlord requires sales audit, tenant must bear the full costs of such annual sales audit.

Part B: Leasing Principles for Key Tenancy Terms

2. COSTS TO PREPARE THE LEASE AGREEMENT AND THIRD PARTY

COSTS

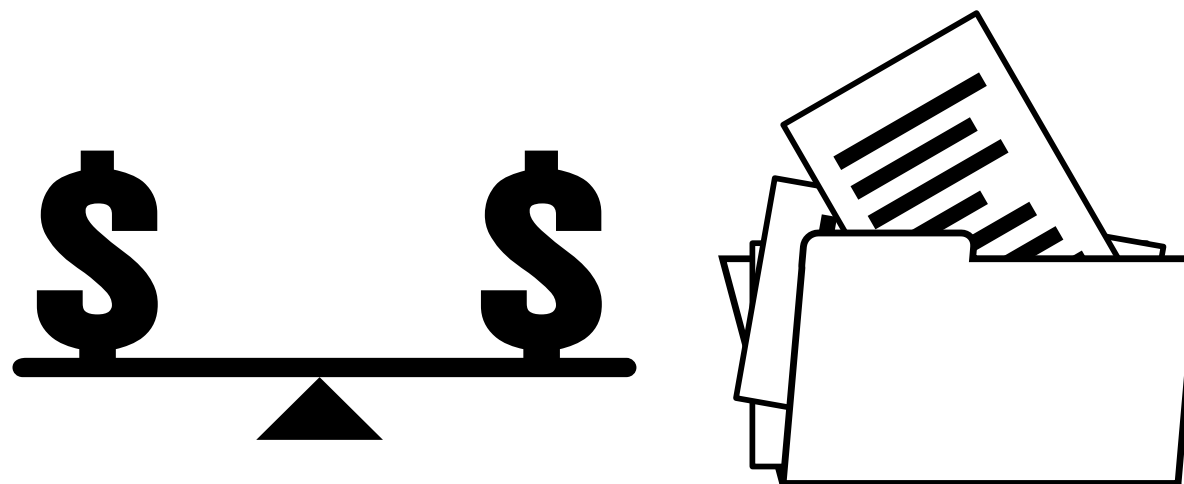
Type of Costs	Principles
Public Liability Insurance	<ul style="list-style-type: none">• Must not require tenant's public liability insurance (PLI) coverage limit to be >S\$3 million or the PLI limit in landlord's PLI policy, whichever is lower.• Not Applicable for retail premises leased or to be leased under a qualifying lease which have a floor area of more than 15,000 square feet.
Electricity Charges	<p>If landlord is on the En-bloc Contestability Scheme (ECS):</p> <ul style="list-style-type: none">• Landlord is not required to provide tenants with a choice of electricity retailer and landlord may arrange for the purchase of electricity for the building from an electricity retailer of its choice.• Must charge electricity costs to tenants on a pass-through basis without any mark-up or price discrimination• Entitled to charge tenants reasonable administrative costs, provided that such administrative costs are communicated upfront to tenants.• Landlord must not charge tenants for any infrastructure costs to benefit from OEM <p>If landlord is not on ECS:</p> <ul style="list-style-type: none">• Must allow tenant to choose their own open electricity market (OEM) retailers. Tenants must bear all costs and expenses incurred in procuring electricity.

Part B: Leasing Principles for Key Tenancy Terms

3. ADVERTISING AND PROMOTION CHARGE AND SERVICE

CHARGE

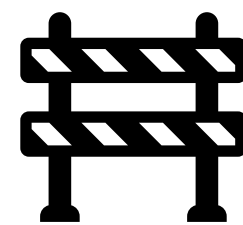
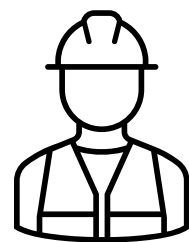
- Gross rent typically consists of base rent, service charge and advertising and promotion (A&P) charge.
- Able to adjust the service charge and the A&P charge during the lease term, provided that the overall gross rent payable by tenant does not increase.
- Keep proper records and accounts in respect of the service charge and the A&P charge.



**Part B: Leasing Principles for
Key Tenancy Terms**

4. PRE-TERMINATION BY LANDLORD DUE TO LANDLORD'S REDEVELOPMENT WORKS

- Only if landlord intends to carry out **substantial redevelopment works** and requires **vacant possession** of tenant's premises
- The lease cannot be pre-terminated purely for the purposes of changing the tenant mix in the Building without carrying out any redevelopment works or requires vacant possession



4. PRE-TERMINATION BY LANDLORD DUE TO LANDLORD'S

REDEVELOPMENT WORKS

Landlord must:

- Give no less than 6 months' prior written notice to tenant, save where the redevelopment is due to prevailing laws
- Inform tenant of proposed Asset Enhancement Initiative works when Written Permission (WP) is obtained prior to signing of the lease agreement else tenant is entitled to additional compensation
- Pay tenant a compensation sum based on **the Agreed Declared Value of the Tenant's Fit Out Capex Works** less depreciation on such Agreed Declared Value amortised on a straight-line basis across the entire period of the initial lease term.

**Part B: Leasing Principles for
Key Tenancy Terms**

4. PRE-TERMINATION BY LANDLORD DUE TO LANDLORD'S REDEVELOPMENT WORKS

Tenant's Fit Out Capex Works refers to:

Capital expenditure works (In respect of the initial lease term – including external design fees but excluding any salvageable items) carried out by tenant during the fitting out period or at the time of renewal to fit out the premises

Capital expenditure works (In respect of any renewal term – including external design fees but excluding any salvageable items) carried out by tenant at the time of renewal in order to repair, improve, upgrade or refresh the premises

**Part B: Leasing Principles for
Key Tenancy Terms**

4. PRE-TERMINATION BY LANDLORD DUE TO LANDLORD'S

REDEVELOPMENT WORKS

Agreed Declared Value:

- 1.The Tenant's Capex Works can be valued as either the estimated value agreed upon by the landlord and tenant or the actual value.
- 2.The tenant is required to declare the estimated value to the landlord for approval when signing the tenancy agreement.
- 3.Within 3 months after completing the Tenant's Capex Works, the tenant must declare the actual value and provide copies of all third-party invoices to the landlord.
- 4.If the tenant fails to declare the actual value within 3 months, the landlord will determine the Agreed Declared Value and notify the tenant in writing.
- 5.If the landlord accepts the estimated cost as the Agreed Declared Value, they will inform the tenant in writing.

**Part B: Leasing Principles for
Key Tenancy Terms**

5. SALES PERFORMANCE

Sales performance clauses (e.g. a clause which allows the landlord to penalise the tenant in any manner, such as pre-termination of the lease, if the tenant does not fulfil a stipulated sales target) must not be included in the lease agreement.

Exceptional Basis

- if both parties agree, sales performance clause can be included.
- A joint declaration must be made by the Landlord to FTIC within 14 days after the lease agreement has been signed by both parties. Failure to do so will render the deviation as null and void and it shall be excluded from the lease agreement.



**Part B: Leasing Principles for
Key Tenancy Terms**

6. MATERIAL ADVERSE CHANGE

Landlord and Tenant should re-negotiate the lease agreement in cases where the tenant is prevented, obstructed or hindered from performing its typical business activity at the leased premises due to events beyond tenant's control.

- For example: In this scenario, a retail business, Tenant X, leasing a commercial space, faces substantial disruption due to uncontrollable events – e.g.: a pandemic – which affect its ability to operate. These events create a material adverse change, necessitating re-negotiation of the lease agreement between Tenant X and the Landlord to address the unexpected challenges and find a mutually beneficial resolution.



**Part B: Leasing Principles for
Key Tenancy Terms**

7. PRE-TERMINATION BY TENANTS

Tenant is entitled to pre-terminate the lease upon the occurrence of either of the following two exceptional conditions:

1. The business principal is insolvent; or
2. Tenant loses the distributorship or franchise rights not due to either the non-performance or breach by tenant

7. PRE-TERMINATION BY TENANTS

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
- Pay landlord a compensation sum equivalent to the security deposit amount.

On the occurrence of either of the exceptional conditions, instead of exercising its right to pre-terminate the lease, tenant may request to assign the lease to a replacement tenant, subject to landlord's approval (such approval not to be unreasonably withheld).

8. SECURITY DEPOSIT

- Security deposit amount shall not exceed an amount equal to 3 months' gross rent for:
 1. floor area up to 5,000 square feet,
 2. lease term of up to 3 years and
 3. Total 3 months' gross rent is more than S\$500.
 - 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
 - for escalating or staggered rental formulas, "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.

8. SECURITY DEPOSIT

- Landlord must accept up to 50% of the security deposit by way of a non-cash mode of payment (Banker's Guarantee, Surety Bond, etc).
- A cover-all guarantee clause for personal liability must not be included in the lease agreement.

Exceptional Basis

- Landlord and tenant can mutually agree to alternative security deposit amounts.
- A joint declaration must be made by the Landlord to FTIC within 14 days after the lease agreement has been signed by both parties. Failure to do so shall render the deviation as null and void and the Security deposit shall be equivalent to 3 months.

9. FLOOR AREA ALTERATIONS

- For each new letting (excluding renewals of the same premises), the lease agreement must provide that landlord must provide a certificate from a registered surveyor confirming the surveyed area of the premises prior to handover (or such later date as landlord and tenant may agree).
- Landlord and tenant may mutually agree to accept building plans from relevant authorities (e.g., HDB, URA, BCA) as an indication of the subject premise floor area in lieu of the surveyed area of the premises by a registered surveyor.

9. FLOOR AREA ALTERATIONS



If the surveyed floor area is more than floor area originally specified in the lease agreement

- If difference $> 5\%$, \uparrow gross rent and security deposit etc capped at 5%; and
- if the difference is 5% or less, \uparrow shall be based on the surveyed floor area.



If the surveyed floor area is less than floor area originally specified in the lease agreement

- If the difference is 10% or less, \uparrow gross rent and security deposit etc based on the surveyed floor area.

Part B: Leasing Principles for Key Tenancy Terms

9. FLOOR AREA ALTERATIONS



If the surveyed floor area is less than floor area originally specified in the lease agreement

- If the difference in the surveyed area is greater than 10%, either the landlord or tenant can terminate the lease agreement by providing written notice within one month after the landlord provides the surveyed area certificate. If the tenant hasn't taken possession of the premises, the lease becomes void, and the landlord refunds all monies paid by the tenant (excluding stamp duties and legal fees, if any), without interest.

If the tenant has taken possession of the premises:

- If pre-termination is initiated by the landlord, the lease becomes void, and the landlord refunds all monies paid by the tenant (excluding stamp duties and legal fees, if any), without interest. The landlord also compensates the tenant for actual expenses incurred for the Tenant's Capex Works up to the date of termination.
- If pre-termination is initiated by the tenant, the tenant must reinstate the premises, and the lease is terminated upon the handover of the premises to the landlord.

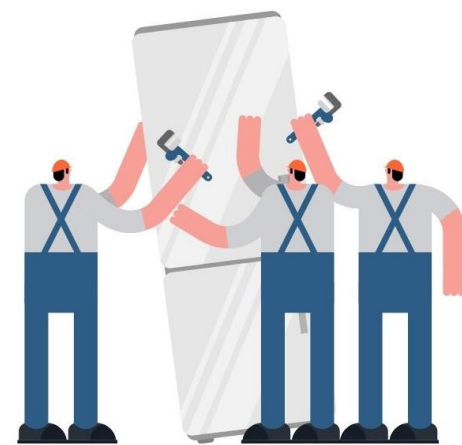
- If both parties decide not to terminate the lease, gross rent and security deposit etc based on the surveyed floor area.

Part B: Leasing Principles for Key Tenancy Terms

10. BUILDING MAINTENANCE

Landlord:

- Shall in the lease agreement contain an obligation to maintain the building or such part(s) thereof where the leased premises are located.
- Must be responsible for any loss or damage suffered by tenant due to the gross negligence or wilful default on the part of landlord to maintain as provided in the lease agreement.



**Part B: Leasing Principles for
Key Tenancy Terms**

11. RENTAL FORMULA

Rental formula must be based on a single rental computation throughout the lease term, i.e. the rent formula must not have an “either/or, whichever is higher” formula.

Example of Rental Formula	Compliant with Code? (Y/N)
S\$X psf <u>or</u> Y% of GTO, <u>whichever is higher</u>	Exceptions to the rental formula must be agreed upon by both the landlord and tenant. The landlord must file a joint declaration with the agreed alternative formula to FTIC within 14 days after signing the lease. Failure to do so may result in FTIC publicly naming the landlord for not following fair tenancy guidelines.
S\$X psf + Y% of GTO above S\$Z per month	
(S\$X psf + Y% of GTO) <u>or</u> Z% of GTO, <u>whichever is higher</u>	
S\$X psf	Yes
Y% of GTO	Yes
S\$X psf + Y% of GTO	Yes

PART C: LEASING PRINCIPLES FOR CONFIDENTIALITY

CLAUSES AND DATA TRANSPARENCY

Part C outlines the Leasing Principles pertaining to confidentiality clauses in lease agreements and were designed to promote greater data transparency as agreed by the Fair Tenancy Pro Tem Committee.

12. Confidentiality

- Lease agreements may include a confidentiality clause that requires both landlords and tenants not to share lease-related information.

Confidentiality Clause in Lease Agreements:

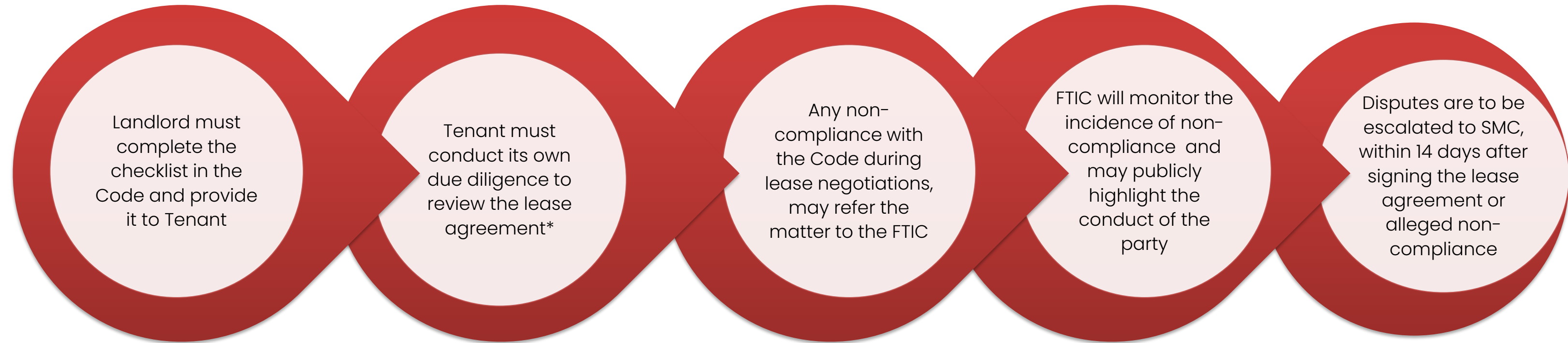
- Applies to both landlord and tenant
- Safeguards shared lease information
- Lease-related information can be disclosed as required by the law or authorities or any arbitral or judicial proceedings or any legal process issued by any court or Authority.

13. DATA TRANSPARENCY

Landlords using sales data for rent calculations must share sales data with tenants before signing a lease and with existing tenants on a bi-annual basis. However, if there are fewer than 3 tenants in a trade category, sales data doesn't need to be shared for confidentiality reasons.

Period	Trade Category	Number of units	Total monthly sales turnover of category	Total Floor Area (sqft) occupied by category	Average Sales (psf)
E.g. 1 Jan – 30 June 2021	Fashion	6	\$1,323,000	10,000	\$132.36

PART D: DISPUTE RESOLUTION & ENFORCEMENT OF CODE OF CONDUCT



Pointers prior to signing a Lease Agreement:

1. A lease agreement is a contract with commercially agreed terms. Parties are free to negotiate for terms and conditions that will govern your contractual relationship when entering into a lease agreement with reference to the CoC.
2. Parties must conduct their own due diligence to review the lease agreement before signing. Once the lease agreement is signed by both parties, the terms are binding on them unless otherwise prescribed by law.

CONTACT US

- For more information and to download a copy of the Code of Conduct for Leasing of Retail Premises in Singapore, please visit: <https://ftic.org.sg/code-of-conduct/>



- For any enquiries, please contact enquiry@ftic.org.sg



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Lease Agreements for
Retail Premises Act –

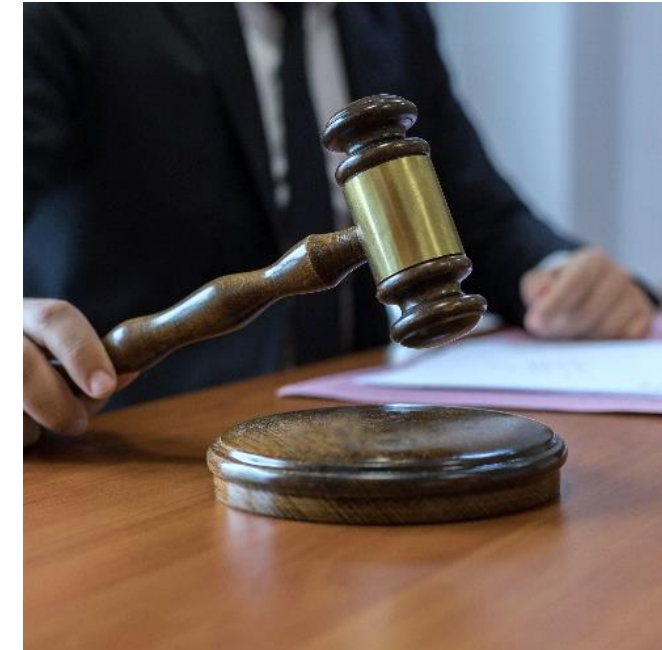
**Online Dispute
Resolution (ODR)**



INTRODUCTION TO MEDIATION



Generally, mediation is a **collaborative** and **voluntary** process in which matters discussed are strictly **confidential** and on **without-prejudice** basis.



The mediator **oversees** the negotiation process but does not impose a decision.



Through the assistance of a **neutral** third party (mediator), to facilitate negotiations between the parties to resolve dispute **amicably**.



The **parties have the power** to decide whether they wish to enter into a settlement and determine the terms of the settlement.

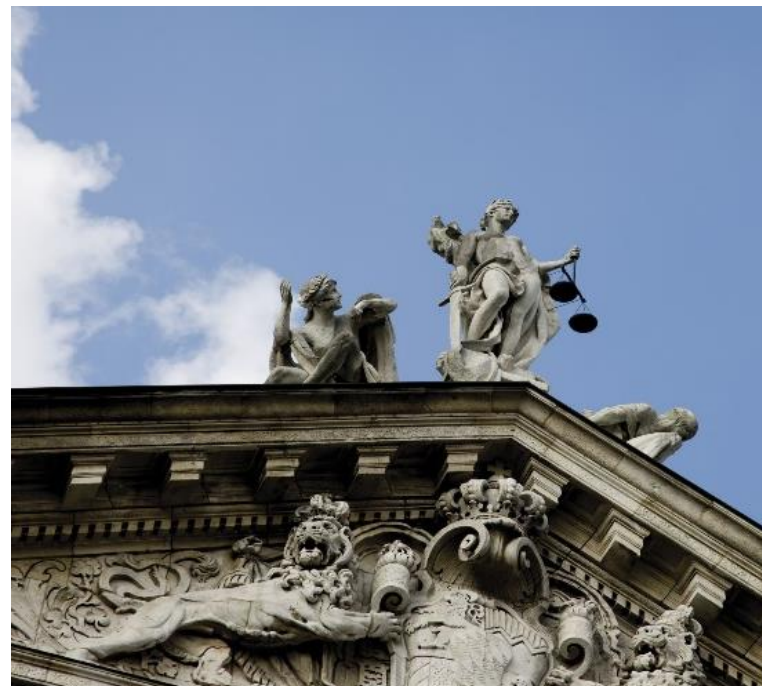
INTRODUCTION TO ADJUDICATION



If mediation **does not result in a settlement** and the Claimant requests for adjudication, an adjudicator will be **appointed**. Adjudicators **determine** whether there has been **non-compliance** with a leasing principle.



Adjudicators are **independent** and **impartial** individuals, who **hear** and **determine** disputes in a timely manner, in compliance with **principles of natural justice**.



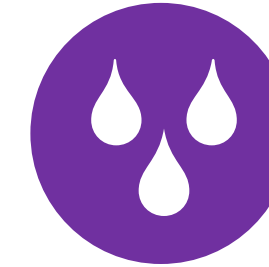
Adjudication is a **documents-only process**. At the end of the adjudicatory process, the **determination** rendered by the adjudicator will have to be **made in writing** and will be **binding on parties**, unless it is set aside by Court, arbitral tribunal or parties' agreement.

MEDIATION BENEFITS



CONTROL

- Parties have **control over outcome** of dispute and settlement terms



COST EFFICIENT

- **Saves costs and time**



PRAGMATIC SOLUTIONS

- More opportunities to explore options and develop **creative and pragmatic solutions**



PRIVACY

- **Improves relationships**
- **Privacy and confidentiality**



WITHOUT PREJUDICE

- **Without prejudice** to other dispute resolution processes



FLEXIBLE

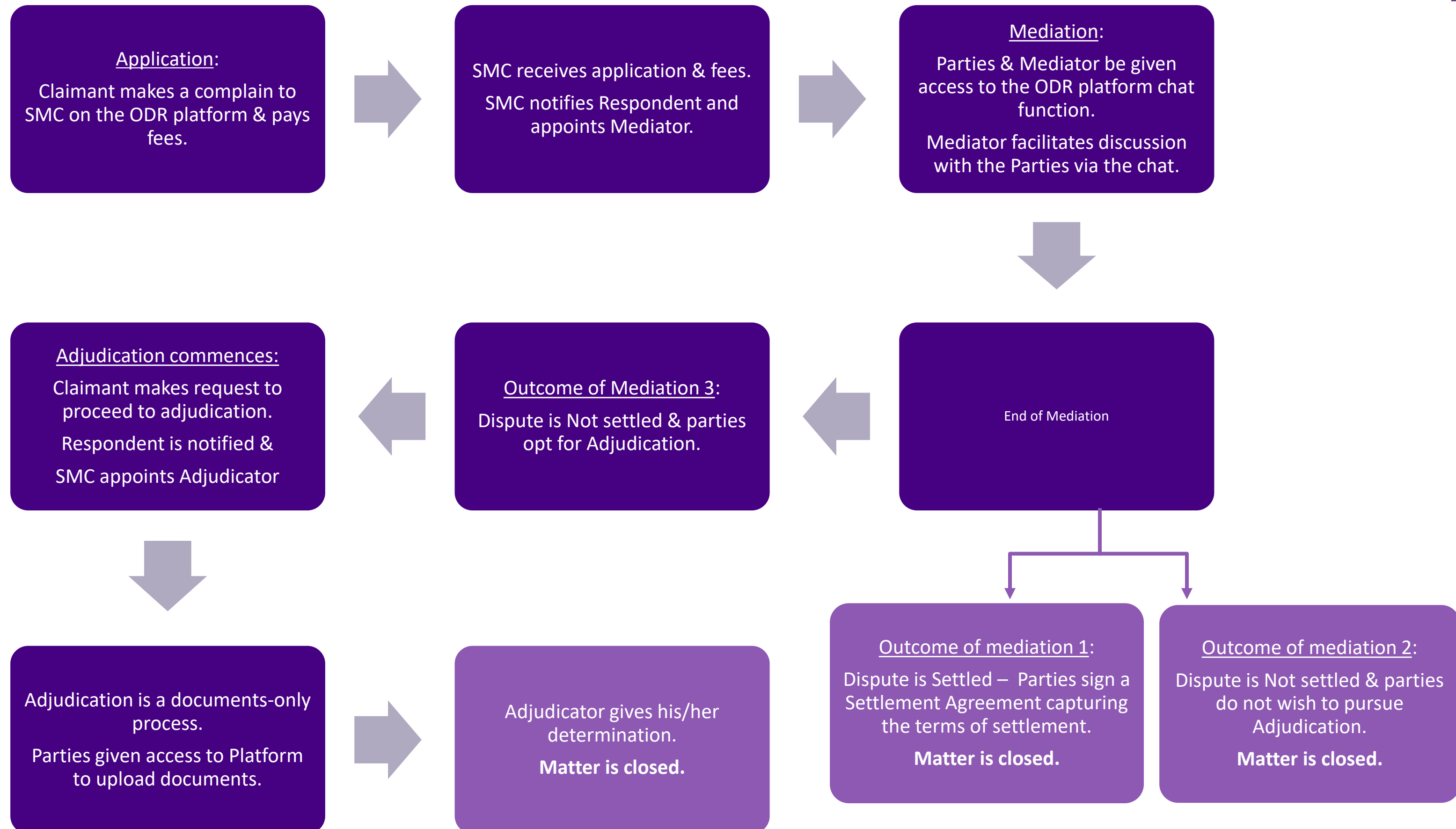
- **Informal and flexible process**



WIN-WIN SOLUTION

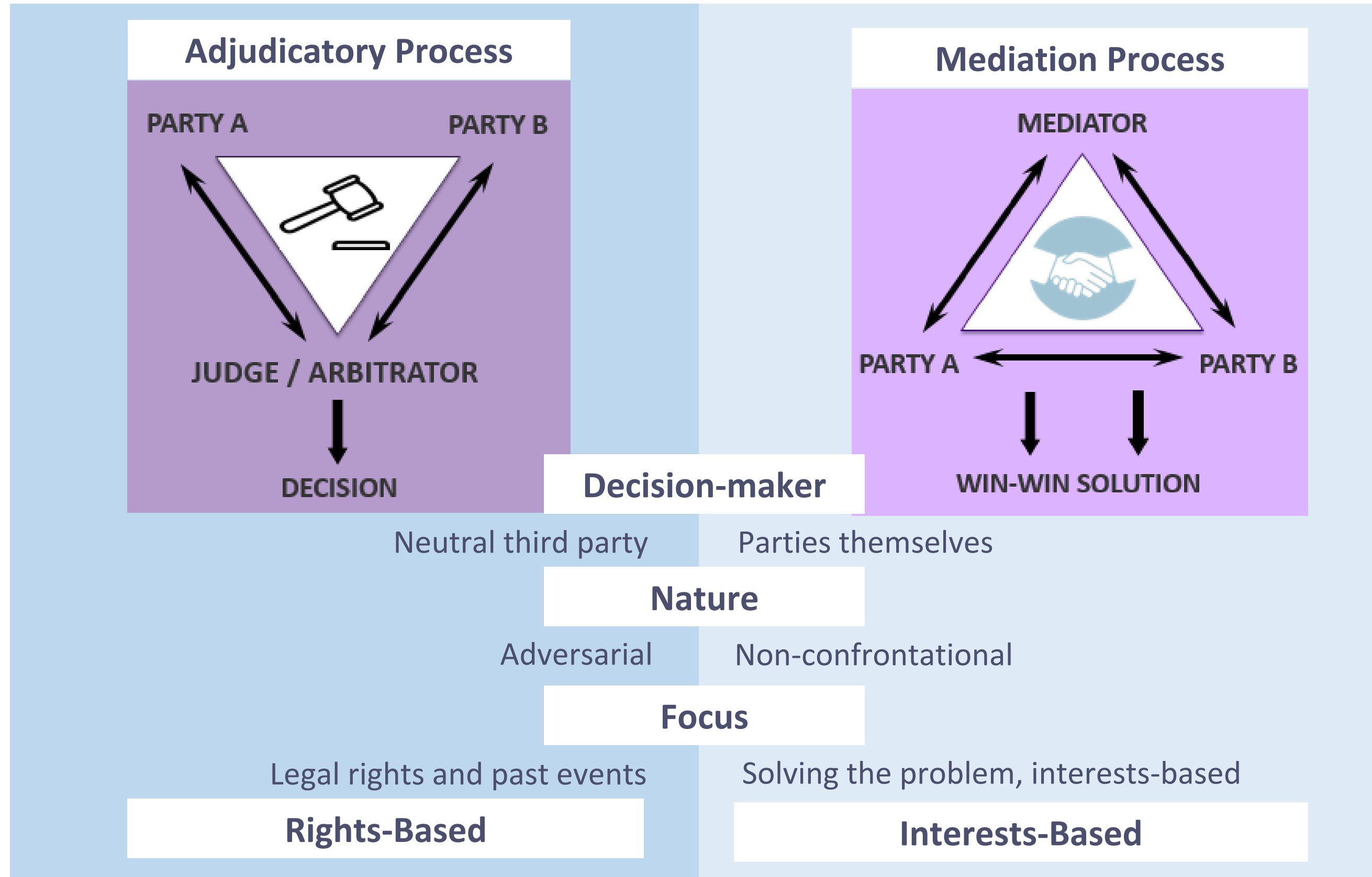
- Empowers parties to reach a **mutually agreeable** resolution.

Online Dispute Resolution (ODR) Process Overview



ADJUDICATORY & MEDIATION PROCESS

Explanation of the 2 processes



FEES

SMC Mediation Fees		SMC Adjudication Fees
Sum in dispute	Mediation fees** (incl. of Application Fees and prevailing GST*)	Adjudication Fees** (incl. of prevailing GST*)
Up to \$20,000	\$378.10	\$378.10
> \$20,000 - \$40,000	\$464.50	\$594.38
> \$40,000 - \$60,000	\$550.90	\$1,079.54

* The fees above are based on **8% GST** and will be updated accordingly when 9% GST comes into effect in 2024.

** Payable per party.



ABOUT SMC

- Not-for-profit organisation structured as a company limited by guarantee of the Singapore Academy of Law.
- Incorporated on 8 August 1997; launched on 16 August 1997.
- Primarily dedicated to promoting and facilitating the settlement of disputes by mediation and other alternative dispute resolution processes.



CONTACT US

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