

Corporate Real Estate

# New Law Governing Terms of Lease of Retail Premises to be Introduced

## Introduction

On 4 July 2023, the Lease Agreements for Retail Premises Bill ("**Bill**") had its first reading in Parliament. The Bill seeks to make it mandatory for retail lease contracts to comply with the Code of Conduct for Leasing of Retail Premises in Singapore ("**Code**").

The Code was issued by the Fair Tenancy Pro Tem Committee in 2021 and was last updated in 2022. It sets out guidelines and principles for landlords and tenants of qualifying retail premises to enable fair and balanced lease negotiations. The full Code is available [here](#).

The Bill serves the following functions:

- Establishes the Fair Tenancy Industry Committee;
- Provides for the Code and the obligations of landlords and tenants in relation to the leasing principles contained therein; and
- Establishes a dispute resolution process in relation to complaints of non-compliance with the leasing principles or obligations.

The introduction of the Bill follows a public consultation on the proposed legislation held by the Ministry of Trade and Industry from 18 July 2022 to 5 August 2022.

While adoption of the Code has thus far been voluntary, the Bill – when passed – will require compliance with the Code's leasing principles. Landlords and tenants of retail premises should thus be aware of their obligations under the Code to ensure compliance.

This Update highlights the key features of the framework set out under the Bill and the Code.

## Key Features of the Bill

The Bill seeks to promote fair and balanced bargaining positions as between landlords and tenants in respect of leases for retail premises.

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### Fair Tenancy Industry Committee

The Bill establishes the Fair Tenancy Industry Committee (“**Committee**”), which serves the following functions:

- Reviewing and modifying the Code from time to time;
- Monitoring and promoting compliance with the Act (once passed) and the Code;
- Establishing the process for the submission of declarations of permitted deviation and maintaining a register of the same;
- Gathering feedback on matters relating to the leasing of retail premises; and
- Conducting outreach and education.

### Code of Conduct

The Bill requires a landlord and a tenant of a qualifying lease to comply with the leasing principles in the Code. A qualifying lease refers to a lease for retail premises, or an extension or renewal of such lease, where:

- The agreement is signed on or after the date of commencement of the relevant part of the Bill; and
- The period of the lease (or extension or renewal) is or exceeds one year.

The Code does provide for deviations from certain mandatory requirements where allowed by the relevant leasing principles, with the agreement of both parties to the agreement. The Bill provides for such deviations as follows:

- If required by the leasing principle in question, a declaration of the permitted deviation must be submitted to the Committee within the prescribed period (such period will be prescribed in subsidiary legislation).
- If the landlord fails to comply, the permitted deviation is void. Further, if the leasing principle provides for any consequence, such consequence may be enforced as if it were a term of the lease agreement.

### Dispute Resolution

To facilitate the enforcement of the Code, the Bill sets out a dispute resolution procedure for complaints of non-compliance with any leasing principle or obligation. The framework for dispute resolution is as follows:

- **Complaint** – A landlord or tenant under a qualifying lease may file a complaint of non-compliance with the authorised dispute resolution body.

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- **Mediation** – The dispute resolution body will appoint a mediator from its panel to mediate the dispute between the parties and assist them to settle the dispute.
- **Adjudication** – If mediation does not result in settlement, the complainant may apply to the dispute resolution body for adjudication. The dispute resolution body will then appoint an adjudicator from its panel to hear and determine the dispute.
- **Adjudication determination** – The adjudicator may determine whether there has been non-compliance with the leasing principles, whether the lease is to be varied, and whether there should be compensation for non-compliance in accordance with any leasing principle. Such determination is binding on all parties to the dispute.
- **Enforcement** – If the parties have reached a settlement, they may apply to record the settlement agreement as an order of court. Similarly, an adjudicator's determination may, with the permission of court, be enforced in the same manner as a judgment or order of the court.
- **Setting aside** – Parties may apply to court to set aside an adjudication determination or a judgment obtained pursuant to an adjudication determination. The Bill sets out certain grounds of challenge.

## Key Features of the Code

The Code sets out overarching principles to guide landlord and tenants in the conduct of negotiations of lease agreement of qualifying retail premises.

The Code then sets out the leasing principles for 11 key tenancy terms. Some of the key principles are highlighted below. For further details, please see our earlier Client Update on "Code of Conduct for Leasing of Qualifying Retail Premises", available [here](#).

- **Exclusivity**

As a general rule, exclusivity clauses must not be included in the lease agreement, unless mutually agreed on an exceptional basis.

- **Costs to prepare the lease agreement and third party costs**

With regard to costs in connection with the lease, landlords and tenants must abide by the principles of transparency, including only legitimate and justifiable costs, and a prohibition against profiteering.

The Code also includes principles relating to costs of point-of-sales systems, costs of preparing the lease agreement, fees for tenant-initiated requests, and third party costs.

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- **Advertising and promotion charge and service charge**

The landlord is entitled to adjust the service charge and the advertising and promotion charge during the lease term, provided the overall gross rent payable does not increase.

- **Pre-termination by landlord due to landlord's renovation works**

The Code sets out principles for any provision granting the landlord a right of pre-termination. This includes permitted purposes of pre-termination, the requirement of six months' prior written notice, whether compensation must be paid to the tenant, and how such compensation should be calculated.

- **Sales performance**

Sales performance clauses generally must not be included in the lease agreement unless mutually agreed on an exceptional basis.

- **Material adverse changes**

Parties are encouraged to re-negotiate the lease agreement where the tenant is prevented from performing its typical business activities at the premises due to events beyond their control.

- **Pre-termination by tenants**

The Code sets out principles for any provision granting the tenant a right of pre-termination. This includes exceptional conditions for termination, the requirement of six months' prior written notice (or rent in lieu), the compensation sum, and the requirement to reinstate the premises.

- **Security deposit**

The Code sets out the calculation of the maximum security deposit and allows for mutual agreement to alternative amounts.

A cover-all guarantee imposing personal liability on the tenant's directors, shareholders etc. must not be included in the lease agreement. However, the tenant may choose to provide the security deposit by way of a personal guarantee, in lieu of cash or bank guarantee, subject to the landlord's acceptance.

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- **Floor area alterations**

For each new letting (excluding renewals of the same premises), the landlord must provide a certificate from the registered surveyor confirming the surveyed area of the premises prior to handover (or such later date as the parties may agree). The Code provides for adjustment of gross rent and security deposit in instances where the surveyed floor area is larger or smaller than the floor area originally specified in the lease agreement, and for termination of the lease agreement if the surveyed floor area is more than 10% smaller than the specified floor area.

- **Building maintenance**

The lease agreement shall contain an obligation on the landlord to maintain the building (or parts thereof), and the landlord must be responsible for any loss or damage suffered due to their gross negligence or wilful default.

- **Rental structure**

In general, the rental formula must be based on a single rental computation throughout the lease term, unless mutually agreed on an exceptional basis.

## Concluding Words

The Bill sets out a series of key obligations on both landlords and tenants in the negotiation of the terms of a retail tenancy agreement. While these obligations are not yet in force, parties should seek to familiarise themselves with these requirements in order to assess their tenancy agreement templates and consider whether changes have to be made moving forward.

For further queries, please feel free to contact our team below.

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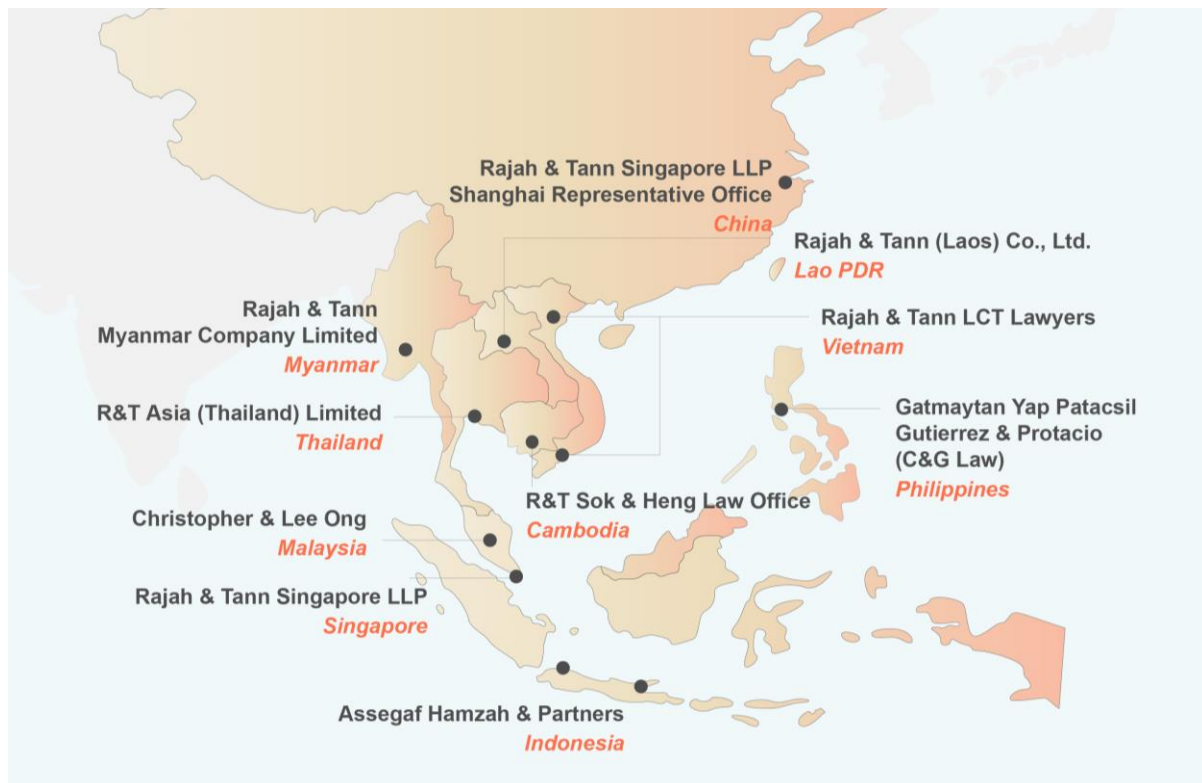
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