



Legal Update
Singapore



ADSAN LAW

COMMON COMMERCIAL LEASE TERMS IN SINGAPORE

Introduction

This article will explain some commonly used terms in commercial leases, and how the recently introduced Code of Conduct for Leasing of Retail Premises (“**COC**”) affects the negotiation of certain key terms.

A commercial lease agreement is a contract between a landlord and a tenant to rent a commercial space to the tenant. Commercial spaces include factories, office space, shop space, and warehouse facilities.

The COC, which came into effect on 1 June 2021 and applies to all qualifying retail premises (“**Qualifying Retail Premises**”),¹ sets out guidelines for fairer lease negotiations between landlords and retail tenants. While parties are generally free to negotiate and agree on the terms of such agreements, landlords of Qualifying Retail Premises will have to adhere to these new guidelines when negotiating lease agreements. Lease agreement includes sub-lease agreement, licence, agreement for lease and accepted letter of offer.

¹ Code of Conduct for Leasing of Retail Premises (“COC”), section 1

Qualifying Retail Premises are premises which are:²

- (a) held under a lease agreement³ 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 Redevelopment Authority and other relevant authorities for any of the uses specified in the COC, which include food and beverage, shop, clinic, pet shop, commercial school, sports and recreation, and place of entertainment.

Managing the lease agreement

Lease Term

Commercial lease agreements will state the lease term, i.e. the duration of the lease. In Singapore, a commercial lease typically lasts 3 years. However, landlords may offer a lease term of 4 to 6 years for tenants which have long-term strategic plans and require a fairly large commercial space.

Option to Renew

Most commercial leases also provide the tenant with the option to renew for a further term prior to the expiry of the lease term. Generally, the option to renew is for a duration that is similar to that of the lease which is about to expire, and at a rental amount that was agreed on by the parties beforehand or at the market rate prevailing at the time of renewal.

Early Termination

Tenants are generally given the right to terminate the lease in very limited circumstances. Landlords, however, usually provide for the right to terminate the lease upon the tenant's breach of a covenant or condition and failure to remedy such breach within a stipulated period.

Under the COC, tenants are entitled to terminate leases early in exceptional circumstances, such as if the tenant loses distributorship or franchise rights through no fault of the tenant, or if the tenant's business principal is insolvent.⁴ However, the tenant must give at least 6 months' prior written notice or pay 6 months' gross rent in lieu of notice to the landlord.⁵

Some leases also contain sale and redevelopment clauses which allow the landlord to terminate the lease if the building is to be sold by way of a collective sale. The landlord must typically give the tenant several months' written notice, and the lease will terminate upon expiry of the notice.

² COC, section 3

³ A "lease agreement" includes a sub-lease agreement, licence agreement, an agreement for lease and an accepted letter of offer.

⁴ COC, paragraph 7.1

⁵ COC, paragraph 7.2

In this regard, the COC provides that the landlord may only pre-terminate the agreement if it intends to carry out substantial redevelopment, asset enhancement or reconfiguration works to the building or part of the building where the premises are situated and requires vacant possession for such works.⁶ The landlord must provide at least 6 months' prior written notice to the tenant.⁷ However, if such works must be carried out to comply with law or authorities' requirements and the time period given to the landlord does not permit 6 months' notice, the landlord must provide such notice to the tenant promptly upon knowing of such requirements.⁸ The landlord must also compensate the tenant based on how much the tenant spent to fit out the premises.⁹

Further, the COC provides that clauses which allow the landlord to pre-terminate if a specified sales target is not met are not permitted.¹⁰ However, on an exceptional basis, such clauses may be allowed if both parties agree to include them and make a joint declaration of their agreement to the Fair Tenancy Industry Committee ("**FTIC**") within 14 days after signing the lease agreement.¹¹ The FTIC serves as the custodian of the COC and monitors industry compliance.¹²

Transfer of Lease

Generally, the commercial lease will contain terms prohibiting the tenant from doing any of the following unless the landlord has given prior written consent:

- Sublet or assign the lease; and
- Part with or share possession of the premises with third parties, including with companies in the same group.

Managing the leased commercial space

Restrictions on Use

Leases generally specify the permitted use of the demised premises. Commercial tenants must only use the demised premises for these stipulated purposes and must not deviate from such use without the landlord's prior written consent.

⁶ COC, paragraph 4.1

⁷ COC, paragraph 4.2

⁸ COC, paragraph 4.2

⁹ COC, paragraph 4.4

¹⁰ COC, paragraph 5.1

¹¹ COC, paragraphs 5.2 and 5.3

¹² Code of Conduct to be Introduced for Leasing of Retail Premises – Singapore Business Federation (26 March 2021). <https://www.sbf.org.sg/code-of-conduct-to-be-introduced-for-leasing-of-retail-premises>.

Alterations

Leases usually prohibit, or limit the extent of, alterations of the demised premises. Structural alterations involving a modification of the form and framework of the building are generally prohibited. Non-structural alterations involving any alteration of existing furniture fixtures or fittings within the premises may generally be made with the landlord's prior written consent.

Good condition

Leases generally provide that a tenant must keep the premises in good condition and must repair any damage or make a replacement if the tenant damages the premises and/or the landlord's fixtures and fittings.

Therefore, a potential tenant should always confirm that the premises are in good condition before deciding to rent them. If the tenant reports any damages to the premises or fittings after it has moved in, the landlord may claim that the damage was caused by the tenant during the lease period and request that the tenant remedy the damage.

Reinstatement of Premises

Tenants will generally be required to reinstate the premises, i.e. restore the premises to their original form, upon the expiry of the lease. Exceptions may be made if the landlord or incoming tenant wishes to retain any of the existing fixtures and fittings.

The reinstatement clause may state the extent of reinstatement that must be carried out before the tenant can officially return the premises to the landlord. This may include washing down the interior of the premises, repainting walls to their original colour, repairing any damage the tenant has caused to the premises, and replacing the landlord's fixtures and fittings which the tenant has removed, damaged or destroyed with others of similar quality.

Rent

Monthly rent

Leases will state the gross rent that is payable by the tenant to the landlord. The gross rent is typically paid on a monthly basis and subject to Goods and Services Tax. It generally comprises:

- the base rent which is calculated based on the price per square foot of the floor area;
- service charge; and
- advertising and promotion ("**A&P**") fee.

The service charge refers to payments to the landlord for general services, including cleaning, lighting, security, maintenance, and repair of common parts of the building.

Leases often state that the service charge and A&P fee can change during the duration of the lease, allowing the landlord to recover any increase in service charges and A&P fees from the tenant. However, the COC states that while the landlord may adjust the service charge and A&P charge during the lease term, the overall gross rent payable by the tenant during the lease term after such adjustment must not increase.¹³

In addition, under the COC, the rental formula must be based on a single rental computation throughout the lease term and must not contain an “either/or, whichever is higher” formula.¹⁴ However, on an exceptional basis, such alternative rent structures are allowed if both parties agree to it and declare their agreement to FTIC within 14 days of signing the lease.¹⁵

Double rent for holding over

Section 28(4) of the Civil Law Act allows landlords to charge double rent or double value on holding over by tenants.¹⁶ Therefore, leases may also have a clause providing that if the tenant fails to yield up the premises to the landlord after the termination of the lease, the tenant will have to pay the landlord double the rent until the tenant gives up possession or double the value during the period of detention of the premises.

Costs for tenants other than rent

Costs payable by tenant at start of lease

Upon execution of the lease, the tenant will usually have to pay a security deposit, stamp duty, and legal and administrative costs in preparing the lease.

Generally, the security deposit is equivalent to 3 months’ gross rent and is to be made in cash. The COC provides that security deposit for Qualifying Retail Premises with a lease term of up to 3 years and floor area of up to 5,000 square feet must not exceed 3 months’ gross rent.¹⁷ However, an alternative security deposit amount may be allowed if both parties agree to it and make a joint declaration of their agreement to FTIC within 14 days of signing the lease agreement.¹⁸

When the lease expires, the security deposit can be refunded to the tenant without interest within a stipulated period from the end of the lease. However, the amount of refund is subject to the tenant’s compliance with all its obligations under the lease. If the tenant breaches any term of the lease, the landlord may use the security deposit to offset any losses resulting from the breach. For instance, if the

¹³ COC, paragraph 3.2

¹⁴ COC, paragraph 11.1

¹⁵ COC, paragraphs 11.2 and 11.3

¹⁶ Civil Law Act (Cap 43, 1999 Rev Ed) s 28(4)

¹⁷ COC, paragraph 8.1

¹⁸ COC, paragraph 8.2

tenant has damaged the premises, the landlord may deduct from the security deposit any costs and expenses incurred to make the necessary repairs and/or replacements.

Utilities and telecommunications

The tenant is generally responsible for all electricity and telecommunication bills.

The COC provides that if the landlord is on the en-bloc contestability scheme (“ECS”), meaning that it purchases electricity for the entire premises, it must charge tenants the same rate payable by it to the electricity retailer on a pass-through basis without any mark-up or price discrimination among tenants of the same premises.¹⁹ However, the landlord may charge tenants reasonable administrative costs, provided that such costs are communicated upfront to tenants.²⁰

If the landlord is not on the ECS, tenants must be allowed to select their own open electricity market retailers, provided that the existing physical infrastructure of the building can support this.²¹ Tenants will have to bear all costs and expenses incurred in procuring electricity from their selected electricity retailer.²²

Insurance

The tenant must generally maintain a comprehensive public liability insurance policy against claims for death, personal injury or property damage or any form of loss arising out of any operations of the tenant in the premises during the lease term. The policy is usually to be maintained with a reputable insurance company that is approved by the landlord.

The COC provides that where a Qualifying Retail Premises has a floor area of 15,000 square feet or less, the landlord cannot require the tenant to have a public liability insurance coverage limit of more than S\$3 million or the coverage limit in the landlord’s public liability insurance policy, whichever is lower.²³

Conclusion

Both the landlord and the tenant should ensure that their commercial lease agreement accurately reflects the agreement between both of them on their respective rights and obligations.

The landlord must complete a prescribed checklist and provide it to tenant when sending draft lease to tenant. The tenant must exercise due diligence when reviewing the terms of the lease agreement.

¹⁹ COC, paragraph 2.5.4(i)(b)

²⁰ COC, paragraph 2.5.4(i)(c)

²¹ COC, paragraph 2.5.4(ii)(a)

²² COC, paragraph 2.5.4(ii)(b)

²³ COC, paragraph 2.5.3

Further, with the introduction of the COC, it is important that landlords of Qualifying Retail Premises carry out a thorough review of their existing lease templates in order to align them with the principles set out in the COC.



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