

OFFICE OCCUPIER GUIDE

ADVISORY AND TRANSACTION SERVICES
HONG KONG

CBRE

TENANCY AGREEMENT

Tenancy Agreements are legally binding contracts specifying the detailed rights and obligations of both the tenants and landlords during the lease term. Whilst CBRE can confirm commercial terms and advise on individual landlord practices, tenants are advised to have the document reviewed by their legal advisors and seek independent legal assistance in understanding its terms prior to signing. Typically, most landlords of single-owned or Grade A buildings are less willing to accept major amendments and tenants are expected to accept the landlord's standard format with minimal changes. Anything of material importance can and should be raised prior to signing.

SPACE MEASUREMENT

No single standard of space measurement applies in Hong Kong. Floor areas are usually quoted based on either gross area, lettable area, or net area. As these measurements are used to calculate the rent, service charges and other charges, tenants should understand the difference between them by seeking independent professional opinion in order to compare the true cost on actual usable space of the premises. As a general reference only:

NET AREA

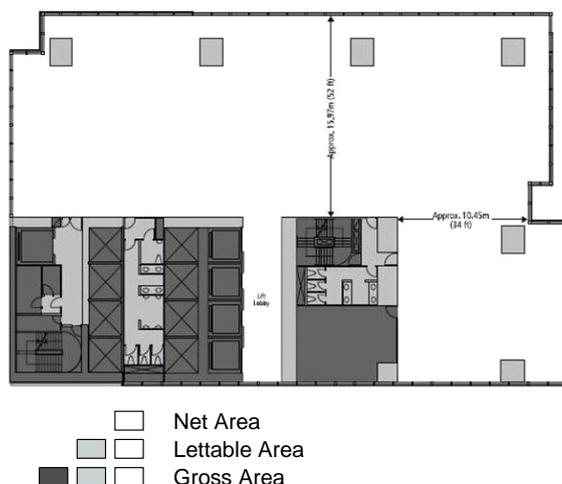
The actual usable area of the premises, sometimes quoted as the 'carpetable area.' In some cases, such as whole floor spaces, this also includes elevator lobbies. The efficiency of a net area is typically in the range of 95–100% of the quoted area, meaning a 0–5% loss factor.

LETTABLE AREA

The net area plus structural columns and a percentage of the common areas, such as elevator lobbies and restrooms. Common areas are apportioned on a pro-rata basis if the floor is subdivided. Efficiency of the lettable area depends on the size of the floor plate and usually ranges from 70–90% of the quoted area.

GROSS AREA

The total area measured to the outside of the external walls, including elevator lobbies and wells, restrooms, staircases and all mechanical areas. Similar to lettable area, all elements of the common areas are apportioned on a pro-rata basis if the floor is subdivided. Depending on the size of the floor plate, the efficiency of gross area is in the range of 60–80% of the quoted area.



LEASE LENGTH (TERM)

TYPICAL TERM

Generally, a standard lease term is three years. Some large tenants may take leases of six to nine years, which is typically subject to rent reviews at the end of every third year at open market rent (OMR). If the parties cannot agree on OMR, an independent expert valuer or arbitrator determines it as defined in the Tenancy Agreement.

OPTION TO RENEW

Larger tenants can often secure an option to renew at expiry of the original lease. Conditions such as serving of notice and method of assessment of the rental are often stated in the Tenancy Agreement. Typically, rent is determined by OMR at lease renewal.

EARLY TERMINATION

There are typically no alienation rights for tenants in Hong Kong. In rare cases, the tenant may be able to terminate the lease early through one of two ways:

- Through negotiation and mutual written agreement to surrender by compensation, usually the full remaining amount owed.
- Through introduction of a replacement tenant to take up a new lease with terms and conditions agreeable to the landlord (usually at a higher or equal face rental).

In either case, the outgoing tenant will need the written permission and cooperation of the landlord and should expect to pay the landlord's share of the agency fee, legal costs and any other associated costs.

OCCUPANCY COSTS

RENT

Rents are quoted and payable in Hong Kong Dollars (HK\$) per square foot on gross, lettable or net area on a monthly basis. Rents are payable in advance and are usually exclusive of management fee, rates, service charge or any additional costs. Common descriptions of rental include the following and their meaning below is provided as a general reference only:

Asking Rental

Rental quoted by the landlord. Typically there will be some room for negotiation.

Face or Headline Rental

Rental achieved after negotiation.

Effective Rental

Average rental achieved for the lease period after amortization of the rent-free period or other leasing incentives, calculated over the term of the lease.

TENANT INCENTIVES

Unlike other markets, there are limited tenant incentives in the form of fit-out or capital contributions. Typically rent-free is the main incentive provided by landlords.

RENT-FREE PERIOD

An incentive offered by the landlords to the tenants as an allowance for the fitting-out of the premises. The length of the rent-free period depends on the size of the premises and the prevailing market conditions.

SERVICE CHARGES (MANAGEMENT FEE)

Generally, a charge applicable to each tenant calculated on the letting area of the premises in net, lettable or gross. The fee is quoted per square foot per month, is non-negotiable and may be revised from time to time. This fee normally includes charges for the central air-conditioning supply, building management, cleaning and service of common areas, etc.

GOVERNMENT RATES

Generally, a tax payable to the Government, payable on a quarterly basis at certain percentage (eg 5%) of the rateable value of the premises as evaluated by the Government, typically paid by the tenant. The Government assesses the value annually.

GOVERNMENT RENTS

In gist, a payment required to be made to the Government on the rateable value of the premises. Whilst most landlords pay this themselves, some will pass it on to the tenant.

TRANSACTION COSTS

STAMP DUTY

A one-time tax payable to the Government based on the contract sum and length of the tenancy agreement, usually shared equally between the landlord and the tenant and calculated on the rent payable and length of lease term.

LEGAL COST

Tenant and landlord may appoint their own legal representatives. Unless specified otherwise, each party bears its own legal costs.

CAR PARKING

Car parking spaces tend to be scarce. Where spaces are available, these will normally be allocated on the basis of a monthly license agreement for a separate charge. The number of car parking spaces allocated is usually in proportion to the size of the premises leased.

HOLDING DEPOSIT

Usually equivalent to one month's rent and generally paid subject to contract (to the landlord or their solicitor) when an offer is made on a property and prior to receiving a draft Tenancy Agreement. This deposit normally becomes the first month's rent when the Tenancy Agreement is signed. Sometimes, the amount of holding deposit may be as much as three months' rent. This deposit is usually fully refundable in the event that the Tenancy Agreement is not signed by both parties. Sometimes, the offer letter may be signed as a binding contract.

SECURITY DEPOSIT

This is usually equivalent to three to six months' rent, management fees and government rates and is payable by the tenant to the landlord upon signing the formal Tenancy Agreement. The security deposit is held by the landlord for the period of the tenancy and, provided that the tenant has upheld all the terms of the Tenancy Agreement (such as paying the rent and bills, and maintaining the property in good condition), is refundable after the tenancy period.

Terms on which the deposit is returned should be stated in the formal Tenancy Agreement. Most tenancy agreements stipulate that the security deposit will be returned within 14 days to one month after the tenant moves out to give the landlord time to check the condition of the property and ensure that all bills have been settled. Unlike many other countries, in Hong Kong, the security deposit is repaid without interest.

AGENCY FEE

New Lease

The landlord usually pays a fee to the agent who introduces a tenant to the landlord.

Lease Renewal

The tenant pays the fee to the broker representing them. The standard rate is a portion of one month or a percentage of savings over the new lease term based on the landlord's proposed rental.

Sublease

Typically the sublandlord pays the fee to its broker.

Purchase and Sales

Usually the buyer pays 1% to its broker, and the seller pays 1% to its broker. The fee is negotiable, influenced by market conditions and the total value of the transaction.

FIT-OUT (TENANT IMPROVEMENTS)

FIT-OUT COSTS

Tenants normally pay for all tenant improvements. The standard handover condition from landlords includes a space with suspended ceilings, ceiling lighting and restrooms.

In general, a tenant is free to use its own architect and engineers, but is required to use the landlord's nominated contractor for electrical and plumbing works. The tenant must fit out the premises according to plans and specifications as approved in writing by the landlord. Most landlords charge the tenant a vetting fee for reviewing and obtaining approval for the tenant's plans.

For tenant-paid improvements at move-in and during occupancy, the landlord charges handling fees, typically 10% of the price quoted by nominated contractors for carrying out electrical, plumbing, air conditioning, and fire prevention maintenance work.

WIDE RANGE OF FIT-OUT COSTS

Fit-out costs are typically quoted and assessed on the net square footage of the space. Ranges shown below include design, engineering fees and furniture but exclude IT cabling.

- Base level: HK\$600–800 per square foot net (basic specifications to suit trading companies)
- Enhanced: HK\$800–1,200 per square foot net
- Finance/Law Firms: HK\$1,200–1,700 per square foot net
- Very High-End: Over HK\$1,700 per square foot net.

REINSTATEMENT (RESTORATION)

The lease agreement generally requires tenants to restore the property to its original handover condition. Reinstatement costs for Class A or Prime buildings normally range from HK\$120–200 per sq. ft. net.

OTHER LEASE PROVISIONS

LEASE PREPARATION

Typically the landlord's solicitors prepare the lease agreement using fairly standard terms and conditions.

OPTION TO EXPAND

This is negotiable but uncommon. A right of first refusal is more typical, although often only available to larger tenants. When a new space becomes available, the landlord will give written notice to the tenant with a right of first refusal over that space, and the tenant typically has between 15 days and three months to accept that right.

SUBLETTING

Large tenants normally find it easier to secure sublet rights than small tenants. If a landlord agrees to grant a sublet right, the maximum sublet size is specified in the tenancy agreement. The market standard is 20–30% of the total floor area.

LATE DELIVERY BY LANDLORD

The commencement date of the lease term is typically subject to availability.

HOLDOVER BY TENANT

There are no holdover rights for tenants. In some circumstances, a holdover period can be negotiated at a premium rent, although tenants should not rely on this.

SIGNAGE AND NAMING OF BUILDING

Signage and naming rights depend on the area leased and are subject to availability.

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