

Section B

Chapter 21: Letting of Commercial Premises by Open Tender

I. Eligibility of Tenderer

1. Tenderers must tender for Hong Kong Housing Authority's commercial premises in his personal capacity (at the age of 18 years or above) or in the name of a body corporate.
2. If any person who signs as tenderer does so as an agent or a trustee for any other person or persons, he shall disclose in his Tender Form the names and addresses of such person or persons. If no such disclosure is made, the person signing the Tender Form shall be deemed to be a principal and no subsequent disclosure of any trust, agencies, etc. will be recognized by Hong Kong Housing Authority.

II. Ways of Submitting the Tender Form

1. Tenders are invited weekly in general (usually every Friday) through Hong Kong Housing Authority/Housing Department (HKHA/HD) Web Site and newspaper advertisement for leasing of new commercial premises and vacant commercial premises surrendered to Hong Kong Housing Authority. Details of the commercial premises, including location, approximate area, designated trade and reference rent are publicized through HKHA/HD's Web Site: www.housingauthority.gov.hk/.
2. Prospective tenderers may download the respective Tender Forms and Conditions of Tender at Hong Kong Housing Authority/Housing Department (HKHA/HD) Web Site: www.housingauthority.gov.hk/. Prospective tenderers may also obtain Tender Forms and Conditions of Tender at the reception counter of the Commercial Properties Management Unit at Wing A, Level 3, Hong Kong Housing Authority Customer Service Centre, 3 Wang Tau Hom South Road, Kowloon and at the designated estate/shopping centre offices.
3. To ensure confidentiality, tenderers are reminded to seal their Tender Forms together with cheque or cashier's order as payment of tender deposit in envelope. All completed Tender Forms must be deposited by hand in the Tender Box of the Commercial Properties Management Unit, Housing Department located at Wing A, Level 3, Hong Kong Housing Authority Customer Service Centre, 3 Wang Tau Hom South Road, Kowloon before the closing time and date specified in the Conditions of Tender.

4. Tenderers are reminded to note the specified closing time and date for submission of tenders. Submission after the specified closing time and date will not be considered. Hong Kong Housing Authority will not be responsible for any mislaid tenders submitted by methods otherwise.
5. The tender closing time and date will automatically be deferred to 10:00 a.m. on the following Monday or next earliest possible working day of the following week in the following circumstances:
 - (a) if Tropical Cyclone Warning Signal No. 8 or above is issued before and remains in force for any duration within two (2) hours before the tender closing time on the tender closing date; or
 - (b) if a “Black” Rainstorm Warning or “Extreme Conditions” is announced by the Government (via the Information Services Department) before and remains in force for any duration within two (2) hours before the tender closing time on the tender closing date; or
 - (c) when the Director of Housing announces the closure of the Hong Kong Housing Authority Customer Service Centre due to unforeseen circumstances and remains closed for any duration within two (2) hours before the tender closing time on the tender closing date.

For the avoidance of doubt, the tender closing time and date will remain unchanged if Tropical Cyclone Warning Signal No. 8 or above or the “Black” Rainstorm Warning is lowered or cancelled, or “Extreme Conditions” is cancelled, or the Hong Kong Housing Authority Customer Service Centre is reopened, two (2) hours or more before the tender closing time on the tender closing date.

III. Basic Leasing Terms and Conditions

1. All tenancies are normally granted on a fixed term of 3 years without an option to renew. However, terms other than the normal 3 years may also be considered. In cases of commercial premises with designated trades such as bank and large premises with an area over 250m² such as restaurants, supermarkets & etc., a fixed term of 6 years without an option to renew is usually adopted.
2. Tenders will only be accepted from tenderers who will occupy the premises for their own use and no assignment, sub-letting or parting with the possession of the premises or any part thereof will be permitted without the prior written approval from Hong Kong Housing Authority.
- 3(a) Subject to the conditions set out in 3(b), the tenant will have a rent-free period. The period may range from 1 month to 3 months according to the following:

Size of Premises	Rent-free Period
Less than 100m ²	1 month
Between 100m ² - 250m ²	2 months
Larger than 250m ²	3 months

- 3(b) The rent-free period is to be granted subject to:-
- (i) no breach of any terms and conditions of the tenancy agreement; and
 - (ii) no termination of the tenancy by the tenant during the period of 6 months from the commencement of the tenancy (the "Period").

If at any time during the Period there is any breach of the terms of the tenancy and the tenancy is terminated by the Hong Kong Housing Authority in consequence of such breach or if the tenancy is terminated by the tenant prior to the expiration of the Period, without prejudice to any other rights of the Hong Kong Housing Authority under the tenancy agreement, the tenant shall forthwith pay to the Hong Kong Housing Authority the rent for the period as set out in 3(a) above.

4. Shops/Shopstalls which have remained vacant for a considerable period and failed to be let out at least thrice in open rental tendering exercises will be offered an extra rent free period. The offer of the rent free period depends on the vacancy period of the shops/shopstalls :-
- (a) 2 extra months for shops/shopstalls with a consecutive vacancy period between 2 years and 3 years. The 2 extra months' rent free will be granted in the 6th and 12th months of the term of the tenancy;
 - (b) 4 extra months for shops/shopstalls with a consecutive vacancy period over 3 years and up to 4 years. The 4 extra months' rent free will be granted in the 6th, 12th, 18th and 24th months of the term of the tenancy; and
 - (c) 6 extra months for shops/shopstalls with a consecutive vacancy period over 4 years. The 6 extra months' rent free will be granted in the 6th, 12th, 18th, 24th, 30th and 36th months of the term of the tenancy.

If the tenancy created is terminated in whatsoever manner prior to its expiration, the above extra rent free shall be invalidated following the termination of the tenancy. Tenants shall not be entitled to any remaining part of the extra rent free after the tenancy is terminated and shall have no right whatsoever to claim compensation in any form from Hong Kong Housing Authority.

5. Tenderers should note that under the Tenancy Agreement, if the rent, air-conditioning charge or any part thereof shall be unpaid for fourteen days after the same shall become payable (whether formally demanded or not) or if the rates or any part thereof shall be unpaid for fourteen days after the same shall become payable the tenant shall further pay to HA interest at the rate of 2% per month on the amount of rent, air-conditioning charges, rates in arrears and such interest shall be payable and calculated from the date upon which such payment in arrears fell due and not fourteen days thereafter until full payments are made. For the avoidance of doubt, the day on which the rent, air-conditioning charge, rates or any part thereof shall become payable is included in the reckoning of the said period of fourteen days.

6. The attention of tenderers is drawn to the fact that whenever the tenancy is terminated for whatever reasons, the tenant is required to deliver up vacant possession of the premises to Hong Kong Housing Authority unconditionally, and shall not be entitled to any claim for compensation. Hong Kong Housing Authority shall have the full right to relet the premises or otherwise dispose of the premises in such manner and to such person as it may think fit, free from the interference of any person.
7. Tenderers should note that the granting of a commercial tenancy does not confer upon the tenant any exclusive right to any particular trade in the estate/shopping centre, and that Hong Kong Housing Authority reserves the right to let other premises in the estate/shopping centre in whatever manner for the same trade according to the needs as assessed by Hong Kong Housing Authority. Change of usage of the premises during the term of the tenancy shall not be permitted without the written consent of Hong Kong Housing Authority.
8. Tenderers should note that under the terms of the Tenancy Agreement, the Hong Kong Housing Authority shall be entitled to transfer and assign the reversion of the premises and all the rights and obligations under the Tenancy Agreement to any third party on such terms and conditions as the Hong Kong Housing Authority shall think fit without any interference or any claim or demand for compensation whatsoever by the Tenant.

IV. The General Requirements for Fitting-out

1. Tenderers are advised to note the maximum electricity loading available to the premises. Should additional loading beyond the designed capacity be required, the expenses incurred in upgrading, plus on-cost as supervision charge, will be wholly borne by the prospective tenant, provided that the upgrading is approved by the Housing Department. The on-cost rate for works with estimated works value below \$500,000.00 is 20%. For estimated works value \$500,000.00 or above, the on-cost rate is **20.6%** or the individual costing for the on-cost upon confirmation with the prospective tenant.
2. The prospective tenant shall accept the premises in the state and condition in which they are found at the date when possession is given and shall be responsible for the fitting-out of the premises to meet the requirements of Hong Kong Housing Authority and other competent authorities. All modifications to the building services installations, subject to agreement of the Housing Department, must be carried out by contractors appointed by the Housing Department. The expenses incurred in all modifications, plus on-cost as supervision charge, will be wholly borne by the prospective tenant. The on-cost rate for works with estimated works value below \$500,000.00 is 20%. For estimated works value \$500,000.00 or above, the on-cost rate is **20.6%** or the individual costing for the on-cost upon confirmation with the prospective tenant.

3. The prospective tenant is required to submit plans for the intended conversion to the Housing Department and no conversion work shall be started until written approval is obtained from the Housing Department.
4. The prospective tenant will be allowed to install his own air-conditioning system on the premises if no central air-conditioning is provided but installation of air-conditioning plant and routing of pipe/duct are subject to prior approval from the Housing Department. Besides, properly connected drainage for condensation should be provided where air-conditioning units are used.
5. No installation likely to cause disturbance to persons and properties, (e.g. exhaust fans, fume-extractors, etc.) will be permitted without prior approval from the Housing Department.
6. No alteration to shop front is permitted unless approval has been obtained from the Housing Department.
7. Installation of signage outside the premises is allowed only at designated locations. The location, layout, lettering and colour scheme of the proposed signs are to be approved by the Housing Department.
8. A guideline has been developed to help the prospective tenants to identify what types of fitting-out works would require submission to Independent Checking Unit and licensing authority. Respective Shopping Centre Manager will provide the guideline to the prospective tenants before they submit their applications. For complicated submission, a case conference can be arranged with the tenant to collate input from the different disciplines simultaneously.
9. We will vet from Landlord's role and approve the applications for fitting-out works by 3 classes according to complexity as below.

Class 1: Simple case: No alteration of building services installations, structure, waterproofing, drainage, compartmentation, outlook of the building.

To be completed within 10 calendar days including Saturdays, Sundays and public holidays.

Class 2: Normal case: Considerable amount of building works, relocation of internal partitions, forming of openings in floor or wall.

To be completed within 20 calendar days including Saturdays, Sundays and public holidays.

Class 3: Complicated case: Involved major building works, additional floor or wall, installation of heavy machine or equipment.

To be completed within 30 calendar days including Saturdays, Sundays and public holidays.

Note: Time count will stop when reminder to call for supplementary information is sent out to tenant and resumes when full set of required information is received.

V. Normal Leasing Procedures through Open Tender

1. Tenderers will be notified in writing the result of their tenders as soon as a decision is made by Hong Kong Housing Authority.
2. A tenderer may be called upon to attend selection interviews and if eligible be required to execute a Tenancy Agreement. The terms of the Tenancy Agreement shall be those as contained in the standard Tenancy Agreement normally applicable to lettings under Hong Kong Housing Authority's management (a copy of the standard Tenancy Agreement is available for inspection by the tenderer at Hong Kong Housing Authority's office at Commercial Properties Management Unit of the Estate Management Division, Housing Department at Wing A, Level 3, Hong Kong Housing Authority Customer Service Centre, 3 Wang Tau Hom South Road, Kowloon and the tenderer is deemed to have made himself thoroughly conversant with such terms prior to submission of the tender). The tenderer shall attend the interviews or execute the Tenancy Agreement whichever is applicable within the time specified in a written notice issued by the Hong Kong Housing Authority or such person as authorized by the Hong Kong Housing Authority, which time shall be not less than seven days from the date of the notice. The tenancy shall commence and rent shall be payable from the date of the execution of the Tenancy Agreement. In the event the tenderer fails for whatever reasons to attend the interviews or to execute the Tenancy Agreement within the time specified, Hong Kong Housing Authority may by notice in writing to the tenderer forthwith cancel the tender and the letting of the premises to the tenderer hereunder. Upon the cancellation of the tender and the letting of the premises as aforesaid the **entire deposit** shall forthwith be absolutely forfeited to Hong Kong Housing Authority as liquidated damages and not as a penalty without any further notice and Hong Kong Housing Authority may let the premises to such other person and/or deal with the premises in such manner as Hong Kong Housing Authority shall consider appropriate, and the tenderer shall not have any claim whatever for compensation or refund of the deposit or in respect of the premises or otherwise against Hong Kong Housing Authority.

3. On signing the Tenancy Agreement, in addition to the payment of the tendered rent for the first month, the successful tenderer shall be required to pay a deposit equivalent to two months' average tendered rent of the tenancy term, either in cash or bank guarantee or a combination of either, to Hong Kong Housing Authority. Provided that there shall be no outstanding rent, and/or rates, air-conditioning charge, if any, or other breaches of the Tenancy Agreement, deposit in full without any interest thereon, shall be refunded on termination of the tenancy while bank guarantee shall be released to the Tenant.
4. Hong Kong Housing Authority will give prior written notice to the successful tenderer to take possession of the leased premises. The date of commencement of the tenancy shall be the date on which possession of the leased premises is given.

VI. Special Rules and Regulations

1. Hong Kong Housing Authority does not bind itself to accept any tender.
2. All tenders will be considered on a fair basis. In general, the lease of commercial premises let by open rental tender will be granted to the highest bidder. When evaluating tenders, Hong Kong Housing Authority will consider not only the tendered rent offered by a tenderer but also other factors including but not limited to the number of tenders received, the reasonable rent level of the commercial premises, the tendered rent offered by tenderers, the tendered trade of a tenderer and the trade(s) that the tenderer is currently operating in Hong Kong Housing Authority's premises (if applicable), as well as the tenderer's tenancy record (if any) in Hong Kong Housing Authority's premises.
3. Tenderers are reminded that if manipulation of Hong Kong Housing Authority's tender system is discovered, and such has been proved to the satisfaction of the Director of Housing, then the said Director can at his discretion reject the tenders from such tenderers. The decision by the Director of Housing as to whether the tender system has been manipulated and as to whether the tenderers are involved in the manipulation is final.
4. No charge is made on the supply of the Tender Form and for the processing of tenders. Reports should be made to the appropriate authority immediately for any person purporting to offer assistance in respect of the tenders in return for a reward.
5. Any tenderer who attempts to influence consideration of his or her tender by approaching any member of the staff of the Department or by the use of any other improper means shall render his or her tender invalid.

6. Tenderers are warned that offering or giving any gratuity, money or gift as an inducement to any employee of the Housing Department in relation to the tender constitutes an offence under the Prevention of Bribery Ordinance and such cases will be reported to the Independent Commission Against Corruption.
7. To ensure the confidentiality of all tenders, tenderers must submit their tenders by the method as mentioned in paragraph II.3. Hong Kong Housing Authority holds no responsibility for the confidentiality of any tenders submitted by methods otherwise.