

**For discussion
on 13 April 2010**

LegCo Panel on Food Safety and Environmental Hygiene

**Alignment of Public Market Tenancy Agreements and
One-off Tenancy Transfer Scheme**

Purpose

This paper briefs Members on the alignment of public market tenancy agreements by the Food and Environmental Hygiene Department (FEHD) and its introduction of the one-off tenancy transfer scheme, and seeks Members' views on these issues.

Background

2. On 8 December 2009, the Legislative Council Panel on Food Safety and Environmental Hygiene (the Panel) discussed proposals regarding the alignment of public market tenancy agreements and the status of stall operators.

3. On the alignment of public market tenancy agreements, the Administration proposed to distribute the revised tenancy agreement template to Market Management Consultative Committees (MMCCs) and trader associations in order to seek their specific views. The template would be further improved as necessary, and then finalised with a view to completing the signing of new tenancy agreements with tenants before 30 June 2010. Some Panel Members opined that the Administration should first address the positioning, functions and usage of public markets, and improve the operating environment of public markets instead of requiring tenants to sign new tenancy agreements by 30 June 2010. Some Members also urged the Administration to seek consensus with tenants on the rental value of stalls before signing new tenancy agreements in order that market stall rentals could be progressively brought on par with open market rental (OMR).

4. The Administration also proposed to introduce a one-off transfer scheme to resolve the historical problem of the status of public market stall operators. Members of the Panel were generally supportive of the proposal. However, they held the view that the Administration should relax the eligibility criteria, so that any person who could produce proof of being a registered assistant or business partner would be eligible for application, regardless of how long he or she had registered as an assistant or taken part in operating the stall concerned. Besides, some Members were of the opinion that, upon the application being approved, successful transferees should be charged the existing stall rental instead of OMR.

Alignment of Public Market Tenancy Agreements

5. Subsequent to the Panel meeting on 8 December 2009, FEHD distributed the revised tenancy agreement template to MMCCs and trader associations to seek their specific views. During the consultation, some consultees still had reservation about signing the revised tenancy agreement and considered that existing tenants should not be required to enter into new tenancy agreements. In our view, the successive extension of old tenancies in the past was not desirable. In its review of the management of public markets in 2008, the Audit Commission raised concern over this arrangement, and recommended that FEHD should take prompt action to enter into new tenancy agreements with market tenants instead of further extending their existing tenancies through letters. In fact, most of the clauses in the tenancy agreement template are drawn from provisions in different versions of the existing tenancy agreements. New clauses are added to step up the prevention of stall subletting. They give effect to requirements which are reasonable and feasible. For example, a tenant is required to display conspicuously at the stall the Business Registration Certificate issued in his / her name. In view of this, we will invite tenants whose tenancies are due to expire on 30 June 2010 to appear in person to sign the tenancy renewal documents by that date. In order to facilitate those tenants who need more time for consideration, we will allow tenants to choose either the new tenancy agreement template or the original tenancy agreement (including the additional clauses and conditions previously conveyed to tenants through letters by FEHD). However, regardless of the version chosen, tenants are required to appear in person to sign the tenancy agreements at designated district offices of FEHD.

6. Besides, some consultees expressed views on specific clauses of the revised tenancy agreement template. For example, there were views that the clause requiring tenants to pay an amount equivalent to three months' rent and air-conditioning charge (if applicable) if the tenancy is terminated within three months of its commencement should be deleted, and that tenants should not be required to remove all additional structures before surrendering their stalls, etc. As a matter of fact, these requirements are not new as they have already been either conveyed to tenants for compliance through letters a few years ago or stated in the existing tenancy agreements. On the other hand, we have taken on board certain feasible suggestions and further revised the tenancy agreement template. For instance, some specific items of expenses that are not included in the rent but to be paid separately by tenants are spelt out in the tenancy agreement.* The tenancy agreement template as further revised is at **Annex**.

One-off Transfer Scheme

7. The one-off tenancy transfer scheme aims to resolve the historical problems arising from the resiting of hawkers into public markets in the past and to regularise the status of public market stall operators. We propose to allow any person who has been a registered assistant of the stall concerned for at least three years, or any person who has invested in the business of the stall

* Those items are for reference only and by no means exhaustive, as, depending on the operational needs of individual stalls, the expenses items paid by tenants separately (such as telephone charges, gas charges, etc.) differ from stall to stall.

concerned for at least three years, to apply for taking over the status of a tenant with the consent of the original tenant and on producing documentary proof. The three-year requirement is reasonable. In fact, at the consultation meetings held with MMCCs and trader associations in September and October last year, many attendees shared the view that the applicants should have been associated with the stall for a long time, such as being a registered assistant for at least three or even five years. By comparison, the proposed three-year requirement is considered lenient.

8. FEHD will consider each application for transfer of tenancy on its own merits. An applicant will not normally be required to vacate the stall or suspend business while the application is being processed. Once the application is approved, the transferee shall enter into a new tenancy agreement based on the revised aligned template with the Government, with the same tenancy term as that of the tenancy to be renewed by those tenants whose current tenancies are due to expire on 30 June 2010.

9. On the rental level, some Panel Members and trader associations considered that successful transferees should be charged the existing stall rental instead of OMR. We are mindful of that fact that, due to various reasons (including the previous rental freezes), the rentals currently payable by original tenants are likely to be lower than the re-assessed stall rentals. In this connection, we suggest that a successful transferee should pay the actual average rental of stalls of the same category (e.g. wet goods stalls, meat stalls, cooked food stalls, etc.) in the same market, or the rental payable by the original tenant at the time of transfer of tenancy, whichever is higher. If there are more

than ten stalls of the same category in a market, one each of the highest and lowest rental-paying stalls will be excluded from the calculation of the actual average rental, lest it is unduly affected by an exceptionally high or low rental of a single stall. This arrangement has fully taken into account the affordability of transferees and will also help ensure fairness to sitting tenants of the same category of stalls as the rental payable by a transferee will be comparable to that of similar stalls in the market concerned.

Next Steps

10. As mentioned in paragraph 5 above, FEHD will invite tenants whose tenancies are due to expire on 30 June 2010 to appear in person to sign the tenancy extension documents by that date. As for the one-off tenancy transfer scheme, subject to Members' views, FEHD will accept applications for transfer of market stall tenancies from eligible persons as soon as the tenancy renewal exercise starts. We will give the parties concerned sufficient time for consideration and preparation for application. In the meantime, we will review the proposed rental adjustment mechanism and report the outcome to the Panel in due course. The rental adjustment mechanism, once implemented after deliberation, will be applicable to all tenants, including those who become tenants under the one-off tenancy transfer scheme.

Advice Sought

11. Members are invited to offer views on the content of this paper.

Food and Health Bureau

Food and Environmental Hygiene Department

April 2010

TENANCY AGREEMENT

THIS AGREEMENT is made the _____ day of _____ 20

BETWEEN

(1) **THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION ACTING THROUGH THE DIRECTOR OF FOOD AND ENVIRONMENTAL HYGIENE** (hereinafter referred to as “the **Government**” which expression shall include any person authorized by the Director of Food and Environmental Hygiene of the Government of the Hong Kong Special Administrative Region to execute this Agreement) of the one part; and

(2) Mr./Mdm. _____ (HKIC No.: _____) of _____

_____ (hereinafter referred to as “the **Tenant**”) of the other part.

WHEREBY the Government agrees to let and the Tenant agrees to take the tenancy of Stall Number _____ of _____ Market (hereinafter referred to as the “Stall”) for a term from (date) to (date) in accordance with the terms and conditions of this **AGREEMENT** (including all **SCHEDULES**). The location of the Stall is shown on the plan annexed in the **FIRST SCHEDULE** as delineated and edged pink.

1. Rent and Air-conditioning Charge (if applicable)

- (a) The Tenant shall pay to the Government 1 (one) month’s Rent and 1 (one) month’s Air-conditioning Charge (if applicable) in advance on or before the first day of each month as specified in the Second Schedule until termination of this Agreement. Other expenses related to the Stall (including Rates, Water Charge, Electricity Charge, etc.) shall not be included in the Rent and shall be paid by the Tenant separately.
- (b) The Government shall have the right to adjust the Air-conditioning Charge referred to at Clause 1(a) above during the term of this tenancy. In case the Air-conditioning Charge increases or decreases during the term of this

tenancy, the Government may, by giving the Tenant not less than 1 (one) month's notice in writing, inform the Tenant of the adjustment and the Tenant shall pay the adjusted Air-conditioning Charge specified in the notice on the day and in the manner specified therein for the remaining term of the tenancy.

2. **Deposit**

- (a) On the day of signing this Agreement, the Tenant shall pay to the Government the Deposit as specified in the Second Schedule. The Deposit shall be held by the Government during the term of the tenancy without payment of any interest to the Tenant. The Government shall have the right to deduct from the Deposit an amount to cover any expenses, losses or damages suffered by the Government as a result of any breach by the Tenant of any of the terms and conditions of this Agreement (including all Schedules) and the Tenant shall replenish the Deposit to the amount as prescribed in the Second Schedule within 7 (seven) days from the day of deduction which has been made by the Government.
- (b) Subject to other provisions in this Agreement, upon the expiry or sooner termination of the Agreement, the Government shall return the Deposit to the Tenant within 30 (thirty) days after the Tenant has delivered up vacant possession of the Stall to the Government. In case the Government lodges a claim against the Tenant for breach of the terms and conditions of this Agreement (including all Schedules), the Government shall return the Deposit to the Tenant within 30 (thirty) days of the settlement of the last outstanding claim by the Tenant.

3. **Interest**

In case the Rent, the Air-conditioning Charge (if applicable) or any other charge payable under this Agreement remains unpaid after it has become due and payable (whether it has been formally demanded or not by the Government), the Tenant shall, in addition to payment of the said outstanding sum, pay to the Government an interest, which shall be calculated on the outstanding amount at an interest rate equivalent to the average of the best lending rate of the three note-issuing banks in Hong Kong plus 2% (two percent) per annum. Such interest shall be calculated and payable from the day on which such payment falls due. For the avoidance of doubt, the application of this Clause shall not prejudice any other rights of the Government under this Agreement.

4. Use and operation of the Stall

- (a) Except with prior approval of the Government, the Tenant shall not sell, offer or expose for sale at the Stall any commodities or provide any services other than those specified in the Second Schedule.
- (b) The Tenant shall not sell, provide or display for sale or permit to be sold, provided or displayed for sale at the Stall any commodities not intended for retail sale, or conduct wholesale activities at the Stall. If the commodities sold, provided or displayed for sale at the Stall are intended for bulk sale, they shall also be made available for retail sale. For the purpose of this clause, “wholesale” means sale of goods in large quantities to members of the public who buy the goods for resale in the same form as they are purchased; and “bulk sale” means sale of goods in large quantities to members of the public who do not buy the goods for resale in the same form as they are purchased.
- (c) The Tenant shall not use or permit to use the Stall for any purpose other than the Permitted Use set out in the Second Schedule.
- (d) The Tenant shall not at the Stall or any other parts of the Market cause any nuisance, damage or disturbance to the Government, tenants of other stalls and the general public.
- (e) The height of the Stall shall not exceed ____ m. The Tenant shall not place any things on the top of the Stall or at the common parts.
- (f) The Tenant shall not place any things outside the Stall or leave any things protruded, affixed or overhung in whatever manner outside the Stall.
- (g) The Tenant shall not erect any fixtures in any demarcated display area or platform. The Tenant shall clear any such area or platform and shall not leave any articles behind every day at the close of the Market. This Clause is not applicable to service trade stalls and light refreshment and bakery stalls.
- (h) The Tenant shall only use gas fuel or electricity for cooking at the Stall.

- (i) The Tenant shall not cease or suspend business at the Stall for 7 (seven) days or more in any 1 (one) calendar month without prior written consent of the Government.

- (j) The Tenant shall display conspicuously at the Stall when business is being carried on –
 - (i) Stall Card issued by the Government to the Tenant;
 - (ii) Business Registration Certificate issued in the name of the Tenant under the Business Registration Ordinance (Cap. 310); and
 - (iii) every permit issued in respect of the Stall under the Food Business Regulation (Cap. 132X)(if applicable).

- (k) In accordance with Section 5(1) of the Public Markets Regulation (Cap. 132, Subsidiary Legislation, Laws of Hong Kong), “no person shall carry on any business in a public market unless he –
 - (i) is the tenant of a stall or the authorized servant or agent of such a tenant;
 - (ii) is the legal personal representative of such a tenant or the authorized servant or agent of such legal personal representative; or
 - (iii) has the permission in writing of the Director.”

- (l) The Tenant shall register with the Government the employees or agents authorized to carry on business at the Stall and shall ensure each authorized person submits an undertaking to the Government and confirm that –
 - (i) he / she is authorized by the Tenant to carry on business at the Stall as the Tenant’s employee or agent; and
 - (ii) he / she acknowledges that all rights whatsoever in respect of this Agreement shall vest solely in the Tenant and he / she is not entitled to claim any such rights at any time whatsoever.

For the purpose of this Agreement, any act, omission, default or negligence of the Tenant's authorized persons shall be deemed to be that of the Tenant's and the Tenant shall be fully liable. The Tenant shall notify the Government in writing of the withdrawal of such authorization within 14 (fourteen) days.

- (m) The Tenant shall clean the Stall thoroughly and all the things therein up to the requirements of the Government on the monthly "Market Cleansing Day" which is designated by the Government and suspend the business operation at the Stall when cleansing is being carried out.

5. Repairs and maintenance

- (a) The Tenant shall keep the Stall clean and tidy during the term of the tenancy. Any damage (except for fair wear and tear) or losses of the fixtures and fittings provided by the Government at the Stall shall be repaired or compensated by the Tenant within a reasonable time.
- (b) In the event that the Government needs to close the Stall for the purpose of carrying out maintenance, repairs or improvement works in the Market, the Tenant shall close the Stall as required. The Tenant shall have no right to make any claims against the Government in respect of the closure of the Stall. The Rent and Air-conditioning Charge (if applicable) payable by the Tenant for the period of closure of the Stall shall be abated on a pro rata basis. For the purpose of this Clause, any period of closure lasting less than one day shall be counted as one day.

6. Alterations

The Tenant shall not make any alteration or addition to or removal of the Stall or any part of the Market, or install, add to, alter or remove any fixture or fitting of the Stall without the written consent of the Government.

7. Alienation and others

- (a) The Tenant shall carry on business as a sole proprietor at the Stall and shall not assign, mortgage, charge, demise, sublet or part with the possession of the Stall or transfer any of his rights or obligations under the Agreement or enter into any agreement so to do.

- (b) All rights in respect of this Agreement are personal to the Tenant and no other else shall claim such rights.
- (c) The Tenant shall not hold any hawker licence throughout the term of the tenancy.

8. Government's entry

The Government shall have the right to enter upon the Stall for inspection and / or carrying out maintenance, repairs and / or improvement works.

9. Compliance with laws, requirements etc.

- (a) Apart from complying with the terms and conditions of this Agreement (including all Schedules), the Tenant shall observe and comply with all the provisions of the laws of the Hong Kong Special Administrative Region relating to the Stall or in connection with the Tenant's use of the Stall and any such requirements or regulations, terms and conditions imposed from time to time by the Government in respect of the use of the Stall. The Schedules (the First, Second and Third Schedules) to this Agreement shall form an integral part of this Agreement.
- (b) In case the Tenant sells fresh meat, chilled meat, frozen meat, fish, live poultry (including fresh poultry carcass), chilled poultry, cooked food, light refreshment, bakery, siu mei and lo mei, or providing service trade at the Stall, the Tenant shall comply with the relevant conditions and requirements as specified by the Government.
- (c) Acceptance of any Rent by the Government shall not be deemed to operate as a waiver by the Government of any right to proceed against the Tenant in respect of any breach, non-observance or non-performance by the Tenant of the terms and conditions of this Agreement (including all Schedules) on the Tenant's part to be observed and performed.

10. Interviewing the Tenant

In case the Government calls upon the Tenant for an interview for the purpose of execution of this Agreement, the Tenant shall comply with such request within 14

(fourteen) days unless the Tenant has submitted a reason which is acceptable to the Government.

11. Termination

- (a) In any of the following events, namely –
- (i) Any Rent, Air-conditioning Charge (if applicable) or any other charges payable to the Government under this Agreement or any part thereof remains unpaid for 14 (fourteen) days after becoming payable (whether it has been formally demanded or not); or
 - (ii) the Government has reasons to believe that the Agreement has been obtained by fraud by the Tenant; or
 - (iii) the Tenant fails to observe or perform any of the terms and conditions of the Agreement (including all Schedules); or
 - (iv) the Tenant has become bankrupt; or
 - (v) upon the death of the Tenant,

the Government shall have the right to terminate this Agreement forthwith and re-enter the Stall. Save as for the reason stated at (v) hereof above, upon re-entry into the Stall by the Government in accordance with (i) – (iv) of this Clause, the Deposit referred to at Clause 2(a) above shall be wholly forfeited to the Government without prejudice to any other rights of the Government under this Agreement including but not limited to the Government's accrued right of action in respect of any breach of any of the terms and conditions of this Agreement (including all Schedules). If such termination is within 3 (three) months of the commencement of this Agreement, the Tenant shall also pay to the Government an amount equivalent to the Rent and Air-conditioning Charge (if applicable) for 3 (three) months, less the same he has paid under this Agreement for any period which falls within that 3 (three) months.

- (b) Notwithstanding Clause 11(a) above, either party may terminate the Agreement by serving to the other party a prior notice in writing of no less than 1 (one) month and the date of termination of the Agreement shall be on the last day of a month. If the Tenant terminates this Agreement by short

notice, an amount equivalent to 1 (one) month's Rent and 1 (one) month's Air-conditioning Charge (if applicable) prevailing at the date of termination of this Agreement shall be deducted from the Deposit referred to at Clause 2(a) above and forfeited to the Government without prejudice to any other rights of the Government under this Agreement. If the Tenant terminates the Agreement within 3 (three) months of the commencement of this Agreement, the Tenant shall also pay to the Government an amount equivalent to the Rent and Air-conditioning Charge (if applicable) for 3 (three) months, less the same he has paid under this Agreement for any period which falls within that 3 (three) months.

- (c) The Tenant shall not be entitled to claim any compensation in any form from the Government as a result of termination of the Agreement.

12. Yielding up

Upon termination of this Agreement by expiry or for any reason –

- (a) the Tenant shall remove all articles from the Stall at his own expense, return the Stall together with all fixtures and fittings therein in clean and ready to operate condition, and deliver up vacant possession of the Stall. In case the Tenant fails to remove from the Stall any structures or articles within 1 (one) week of the termination of this Agreement, the Government may in its discretion dispose of the same without being liable for any loss or damage and the Government shall be entitled to recover from the Tenant all costs incurred as a result thereof.
- (b) the Tenant shall remove at his own expense all alterations and additions (except for those permitted to be retained by the Government) made to the Stall during the term of the tenancy and repair any damage caused by such removal, failing which, the Government shall be entitled to recover all costs incurred as a result of removing such alterations and additions and reinstating the Stall.

13. Notice

Any notice (including demand note) required to be served to the Tenant under this Agreement shall be sufficiently served if it is delivered to the Tenant or any persons authorized by the Tenant in accordance with Clause 4(1) to carry on business at the

Stall or posted at the Stall or left addressed to him at the Stall or sent by registered post to the Tenant's last known address.

AS WITNESS the signature of the parties hereto on (date).

SIGNED by the **GOVERNMENT**

Name of the Government's representative:

Post:

in the presence of :

Name:

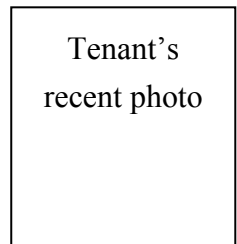
Post:

SIGNED by the **TENANT**

in the presence of :

Name:

Occupation:



INTERPRETED to the **TENANT** by:

Name:

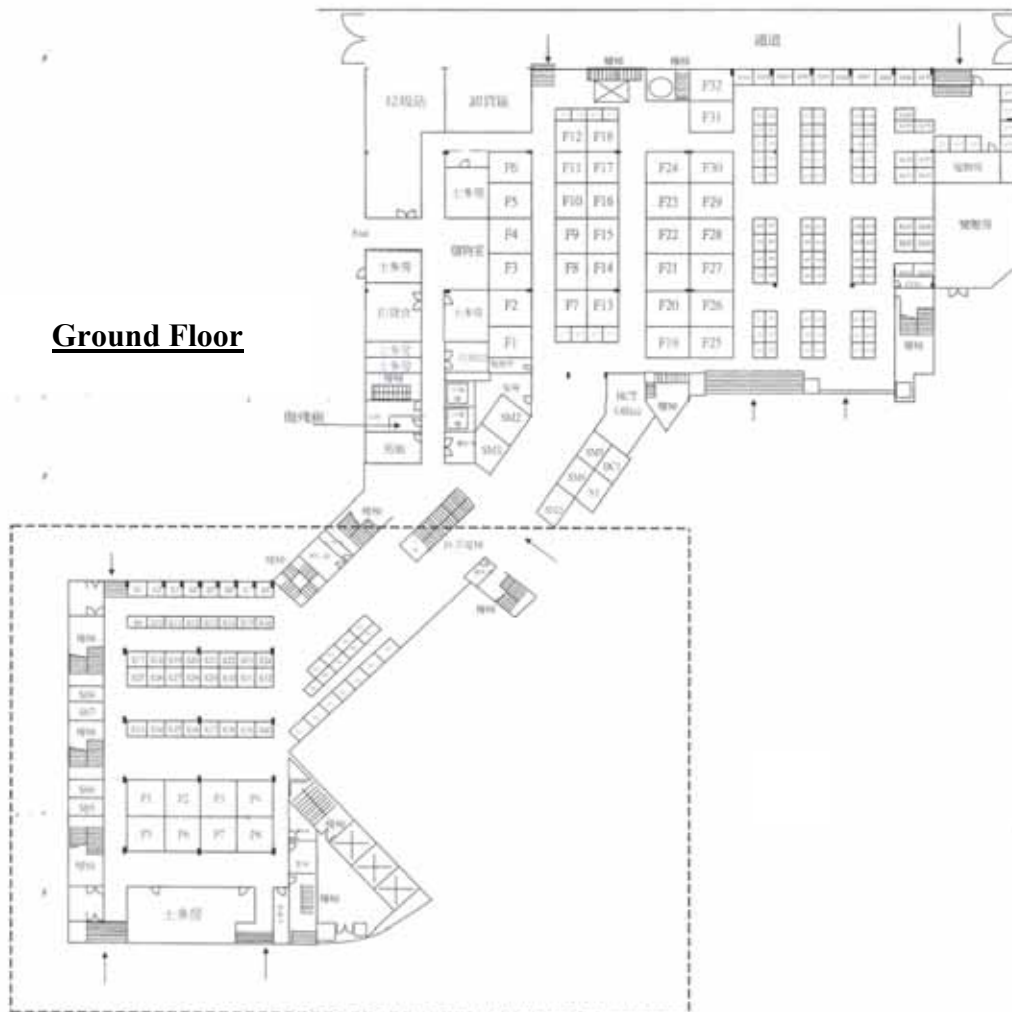
Post:

FIRST SCHEDULE

Stall Location Plan (Example)

Location Plan of Stall No. of
Ngau Chi Wan Market

Ground Floor



Please refer to the following page for the layout plan of this part.

Not drawn to scale

Stall No.:

SECOND SCHEDULE

MARKET :

STALL : (including the display platform or display area demarcated by yellow line)

RENT : (per month)

AIR-CONDITIONING CHARGE : (per month)

DEPOSIT# :

TERM :

PERMITTED USE : (* Retail / Service Trade)

***COMMODITIES PERMITTED TO BE SOLD / SERVICE PERMITTED TO BE PROVIDED AT THE STALL+** :

BUSINESS HOURS :

- # The Deposit is equivalent to 2 (two) months' Rent and 2 (two) months' Air-conditioning Charge (if applicable) prevailing at the date of signing of this Agreement.
- + For service trade stalls, tenants are also permitted to sell commodities related to the service provided at the Stall.
- * Please delete whichever is inapplicable.

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