

**For discussion
on 8 December 2009**

LegCo Panel on Food Safety and Environmental Hygiene

Alignment of Public Market Tenancy Agreements

Purpose

This paper briefs Members on the outcome of the consultation on alignment of public market tenancy agreements and related matters conducted by the Food and Environmental Hygiene Department (FEHD), and seeks Members' views on the way forward.

Background

2. Since FEHD took the responsibility of the management of public markets in 2000 upon its establishment, it has continued to adopt the versions of tenancy agreements used by the two former Provisional Municipal Councils despite their considerable discrepancies. To facilitate market management, new tenancy clauses and conditions have been introduced from time to time and conveyed to tenants through letters for compliance. Last year, the Audit Commission reviewed the management of public markets and identified certain areas for improvement. It recommended that FEHD take prompt action to enter into new tenancy agreements with market tenants instead of further extending their existing tenancies. In response to the recommendation of the Audit Commission, we have decided to align the different versions of public market tenancy agreements currently in use, and itemise existing measures in a new tenancy agreement template so as to achieve consistency in market management and facilitate tenants' understanding of the contents and requirements of the tenancy agreements.

3. On 2 June 2009, the LegCo Panel on Food Safety and Environmental Hygiene (the Panel) discussed the signing of new tenancy agreements between FEHD and public market tenants. At the meeting, Members considered that FEHD should put the exercise on hold and renew tenancy with existing tenants on the original terms for one year up to end-June

2010; during this interim period, FEHD should consult the Panel and market tenants on the content of the new tenancies, formulate a clear policy on the positioning and functions of public markets, and determine the new tenancy terms after reaching a consensus with the tenants. On the issue of subletting of public market stalls, some Members considered that FEHD should address the status of business partners and registered assistants of market tenants who actually operated the stalls. After the meeting, the Administration decided to suspend the implementation of the new tenancy agreement for one year until 30 June 2010, and informed the Panel accordingly.

4. Subsequently, FEHD organised 11 consultation meetings in September and October 2009 to obtain views from representatives of market tenants and traders on the positioning, functions etc. of public markets, and consult them on the alignment of public market tenancy agreements and related matters. The consultation arrangements and results of the consultation on the positioning and functions of public markets and related matters were reported at the Panel meeting on 10 November 2009, and hence are not repeated here.

Alignment of Public Market Tenancy Agreements

Consultation Outcome

5. During the consultation, those who commented on the signing of new tenancy agreements generally considered that the aligned tenancy agreement template drawn up by FEHD earlier was complicated and abstruse and should therefore be simplified. Some expressed concern on specific clauses, such as prohibition of suspending stall business for seven days or more in a month without written consent, restriction on stall alteration without prior consent, compliance with the Government's request for an interview within 14 days, requirement to display at the stall Business Registration Certificate (BRC) issued in the name of the tenant, restriction on keeping of dogs, cats or other pets at the stall, need to indemnify the Government under various circumstances, and requirement to produce business records of the stall to the Government upon request, etc. There were also consultees who questioned the need to sign a new aligned tenancy agreement. Certain individuals asked the Government to offer ex-gratia payment to tenants who declined to sign the new tenancy agreement so that they could cease business, or issue new hawker licences to them.

The Need for a Tenancy Agreement Template

6. Since FEHD was established in 2000 and took over the management of public markets, different versions of tenancy agreements used by the two former Municipal Councils have been adopted for existing tenants despite their considerable discrepancies in content and presentation. For example, some clauses appear only in the tenancy agreements for public markets in the urban area while some are exclusive to those in the New Territories (NT). Similar clauses may be presented in different ways in the tenancy agreements for urban and NT markets. The arrangements for rent payment also vary across different markets. Tenants in some markets are required to pay one month's rent as deposit and then pay rent in advance quarterly. Others pay two months' rent as deposit and then pay the rent on a monthly basis. Separately, in order to facilitate market management, new tenancy clauses and conditions have been introduced over the past few years to, for instance, prohibit suspension of stall business for seven days or more in a month without written consent, and prohibit tenants from hanging things outside their stalls. These new clauses and conditions were initially conveyed to existing tenants through letters for compliance, and subsequently incorporated into tenancy agreements signed with new tenants. In other words, there may be different versions of tenancy agreement for tenants in different markets or even for tenants in the same market who signed their tenancy agreements at different times. This has affected the management of public markets to some extent. To the tenants, the current state is also unsatisfactory as they have to observe not only their original tenancy agreements but also comply with clauses introduced subsequently through letters. To sum up, maintaining the status quo is undesirable. There is a genuine need to align the different versions of public market tenancy agreements currently in use to ensure equal treatment for all tenants, facilitate their understanding of the tenancy clauses, and help strengthen the management of public markets.

7. It is far-fetched and unreasonable to associate the signing of new tenancy agreements with cessation of business. Every tenancy agreement has a term, and tenancy clauses should keep pace with the time.

Amendments to Tenancy Agreement Template

8. We note the concerns expressed by tenant representatives and traders on the tenancy agreement template drawn up by FEHD earlier, and have carefully considered their views on specific clauses. After review, we have amended the template by removing unnecessary clauses to make it simple and easy to understand. The revised tenancy agreement template is at Annex. Most of the clauses in the new template are drawn from provisions in the

different versions of existing tenancy agreements. New clauses are added to step up the prevention of stall subletting. For example, the tenant is required to display conspicuously at the stall the BRC issued in his/her name; and when FEHD calls upon the tenant for an interview for the purpose of execution of the tenancy agreement, the tenant shall duly comply within 14 days or provide an acceptable reason for non-compliance. These requirements are necessary, reasonable and feasible. Tenant representatives and traders have also raised concerns on clauses to disallow suspension of stall business for seven days or more in a month without written consent and to prohibit stall alteration without prior consent. However, these are not new restrictions. Instead, they have been either conveyed to tenants through letters for compliance a few years ago or stated in the existing tenancy agreements. On the other hand, we have removed from the new template the restriction on the keeping of dogs, cats or other pets and the requirement to produce records of business operation of the stall. To address the concern of tenant representatives and traders, we have also spelt out clearly the circumstances in which the Government needs compensation (i.e. that the tenant shall be responsible for repair or compensation in the event of any loss or damage to stall fixtures and fittings provided by the Government other than those arising from fair wear and tear).

9. We propose to distribute the revised tenancy agreement template to Market Management Consultative Committees and trader associations to seek their specific views. We will then make further improvements as necessary, and finalise the tenancy agreement template to enable the signing of new tenancy agreements with tenants before 30 June 2010.

Addressing the Status of Stall Operators

Consultation Outcome

10. At the Panel meeting on 2 June 2009, some Members considered that FEHD should address the status of business partners and registered assistants of market tenants who actually operated the stalls. Some trader representatives also raised similar concern. They pointed out that owing to various historical reasons, some tenants might want their business partners, assistants or relatives other than immediate family members who had operated the stalls with them for many years to take over their tenant status. Under the existing policy, a tenant may transfer his market stall tenancy only to an immediate family member (i.e. parent, spouse, son or daughter) only on grounds such as old age or ill health. Upon death of a tenant, the tenancy may be succeeded by the successor named in the will, spouse, son or daughter. Accordingly, at the consultation meetings held in September and October this

year, we invited tenant representatives and traders to express their views on whether business partners, assistants or relatives other than immediate family members should be allowed to take over the operation of stalls.

11. Most of those who offered comments agreed that a practicable solution should be worked out to address the above issue. They pointed out that in the past when hawkers were resited into public markets, some of those who voluntarily surrendered their licences might bid for a market stall jointly with only one of them named as the tenant, while the remaining ones took part in operating the stall as registered assistants or in other capacities or forms. In the course of the past many years, the stalls might no longer be operated by the tenants. There were also cases in which several family members gave up on-street hawking in exchange for one market stall, and brothers and sisters of the tenant who were not immediate family members might also took part in operating the stall. Most of the consultees agreed that with the consent of the tenant concerned, a business partner, assistant or relative other than an immediate family member should be allowed to take over the status of a tenant. This would also help address cases in which the stall's BRC was issued in a name other than the tenant.

12. On implementation arrangements, some considered that the transfer scheme should be one-off in nature. Others suggested that a tenant might specify in the tenancy agreement a partner who would be entitled to take over the tenancy on payment of a processing fee and with prior notice should the tenant withdraw from business. As regards the eligibility of business partners and assistants, the majority view was that they should have been associated with the stall for a long time (such as some one who had been a registered assistant for at least three to five years) in order to take over the tenant status. Most of those who supported the transfer scheme agreed that the Government may enter into a new tenancy agreement with the new tenants, and raised no objection to levying open market rental. There were also trader associations who considered that the existing tenancy agreements and rents should be applicable to the new tenants.

Proposed Arrangements

13. To resolve the historical problems as mentioned in paragraph 11 above and regularise the status of public market stall operators in a pragmatic manner, we propose to allow, on a one-off basis, those who meet the following criteria to apply for taking over the status of a tenant on producing relevant proof and with the consent of the original tenant -

- (a) any person who has been a registered assistant of the stall concerned for at least three years; or
- (b) any person who has invested in the business of the stall concerned for at least three years.

14. If an applicant with confirmed eligibility is unable to contact the original stall tenant, FEHD will affix a notice at the stall concerned and on the notice board of the market to inform the tenant of the application and his right to express views on it within a specified period of time. A letter to the same effect will also be sent to the tenant's last known address by registered mail. If no reply is received within the specified time limit, FEHD will affix a notice of termination of tenancy at the stall and on the notice board of the market, and send the same to the tenant by registered mail, informing him/her that an appeal can be lodged with the Municipal Services Appeal Board within 30 days. Upon termination of the stall's tenancy, FEHD will proceed to process the application for tenancy transfer.

15. It is proposed that the above one-off transfer scheme should expire along with the existing tenancy agreements on 30 June 2010. Applications must therefore be made on or before that day. The Administration will consider each case on its own merits. If an application is approved, the stall will be offered to the applicant on signing a new tenancy agreement and at open market rental. The applicant will not be required to vacate the stall or suspend business when pending the outcome of his/her application.

16. The operation of public markets involves public funds. As pointed out by the Audit Commission, stall subletting and private transfer of tenancy for monetary gains are unacceptable. Besides, it has all along been stipulated in public market tenancy agreements that stall subletting is not allowed. As such, we have no intention to turn the above scheme into a standing arrangement. In any case, the circumstances giving rise to the historical problems, which the one-off transfer scheme seeks to address, will not recur. To follow up the recommendations of the Audit Commission and the Public Accounts Committee, we will state explicitly in the new market tenancy agreement that the tenant shall display conspicuously at the stall the BRC issued in his/her name to ensure that tenant is the actual stall operator.

Transfer and Succession of Market Tenancies

17. As public markets are community resources, market tenancies should not be regarded as commodities available for free transfer or trading in

the market. Under the present proposal, no succession or transfer of public market tenancy will be allowed except with respect to new tenancy agreements signed with existing tenants upon renewal. However, the rights of the legal personal representative of a tenant will not be affected. This is in line with the arrangement for new hawker licences. It will also enhance the vitality of the trade by allowing greater mobility in the right to operate market stalls and affording opportunities to those interested in becoming market stall tenants.

Advice Sought

18. Members are invited to note the consultation outcome and offer views on the content of this paper.

**Food and Health Bureau
Food and Environmental Hygiene Department
December 2009**

(INITIAL TRANSLATION)

TENANCY AGREEMENT

Annex

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 exercise 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 Stall Number _____ of _____ Market (hereinafter referred to as the “Stall”) from (date) to (date) in accordance with the clauses of this **AGREEMENT** (including the **SCHEDULES**). The Stall for the purpose of identification only is delineated and edged pink on the plan annexed in the **FIRST SCHEDULE**.

MARKET TENANCY AGREEMENT CLAUSES

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 this Agreement ends. Other expenses incurred from the operation of the Stall shall not be included in the Rent and shall be paid by the Tenant separately.
- (b) In case that the Air-conditioning Charge referred to at Clause 1(a) above increases or decreases during the Term, the Government may, by giving the Tenant not less than 1 (one) month’s notice in writing, inform the Tenant of the adjustment. During the remaining Term, the Tenant shall pay the

adjusted Air-conditioning Charge specified in the notice on the day and in the manner specified therein.

2. **Deposit**

- (a) On the date of 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 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 sustained by the Government as a result of any breach by the Tenant of any of the clauses contained in this Agreement (including the Schedules). The Tenant is required to replenish the Deposit to such an amount as prescribed in the Second Schedule within 7 (seven) days from the day of deduction which has been made by the Government.
- (b) Unless otherwise specified, at the expiry or sooner determination of the Term, the Government shall repay the Deposit to the Tenant within 30 (thirty) days after the Tenant has delivered up possession of the Stall to the Government or within 30 (thirty) days of the settlement of the last outstanding claim by the Government against the Tenant in respect of any breach of any of the clauses contained in this Agreement (including the Schedules) on the part of the Tenant.

3. **Interest**

In case that 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 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. The interest 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 section, “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, occupiers 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, light refreshment stalls 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 1 (one) 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) The Tenant shall not permit other persons to occupy the Stall or to carry on business at the Stall, except for those persons who are-
 - (i) servants or agents authorized by the Tenant;
 - (ii) the legal personal representative of the Tenant or servants or agents authorized by the legal personal representative; or
 - (iii) any other person with written approval of the Government to carry on business at the Stall.

- (l) The Tenant shall register with the Government the servants or agents authorized to carry on business at the Stall and shall ensure each authorized person submits an undertaking to the Government to confirm that-
 - (i) he / she is authorized by the Tenant to carry on business at the Stall; and
 - (ii) he / she has no rights whatsoever in respect of this Agreement and shall not claim any rights, and shall acknowledge that all such rights shall vest solely in the Tenant.

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 held responsible. The Tenant shall notify the Government in writing of the withdrawal of such authorization within 14 (fourteen) days.

- (m) The Tenant shall carry out thorough cleansing to the Stall and all the things therein up to the requirements of the Government on the monthly “Market Cleansing Day” designated by the Government. The business operation of the Stall shall be suspended in the course of cleansing operation.

5. Repairs

- (a) The Tenant shall keep the Stall clean and tidy during the Term. Any damages (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 relation to this. The Rent payable by the Tenant for the period of closure of the Stall shall be reduced 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, underlet or part with the possession or otherwise dispose of the Stall or any associated interest or right or enter into any agreement so to do.
- (b) All rights in respect of this Agreement shall vest solely in the Tenant personally and other person shall claim no such rights whatsoever.
- (c) The Tenant shall not hold any hawker licence throughout the Term.

8. Government's entry

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

9. Compliance with laws, requirements etc.

- (a) Apart from complying with all the clauses contained in this Agreement (including the Schedules), the Tenant shall 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 clauses and conditions as may be made from time to time by the Government in respect of the use of the Stall. The Schedules to this Agreement shall form part of this Agreement.
- (b) The Tenant shall comply with the relevant conditions and requirements if the Tenant shall be selling 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.
- (c) The acceptance of 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 non-compliance with any clauses contained in this Agreement (including the Schedules) and on the Tenant's part to be observed.

10. Interviewing the Tenant

When the Government calls upon the Tenant for an interview for the purpose of execution of this Agreement, except with a reason acceptable to the Government, the Tenant shall duly comply with such request within 14 (fourteen) days.

11. Termination

- (a) In any of the following events, that is -
 - (i) the 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 formally demanded or not); or

- (ii) the Government is reasonably satisfied that the tenancy has been obtained by fraud by the Tenant; or
- (iii) any clauses contained in this Agreement (including the Schedules) have not been complied with by the Tenant; or
- (iv) the Tenant becoming bankrupt; or
- (v) upon the death of the Tenant,

the Government shall have the right to determine this Agreement forthwith and re-enter the Stall. Apart from 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 absolutely forfeited to the Government but without prejudice to any other rights of the Government under this Agreement including but not limited to the Government's right of action in respect of any antecedent breach of any of the clauses contained in this Agreement (including the Schedules). If such determination 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) Subject to Clause 11(a) above, by either party giving to the other party no less than 1 (one) month's notice in writing by which this Agreement shall be terminated on the last day of a month. If the Tenant determines this Agreement without giving sufficient notice, the 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 from the Deposit referred to at Clause 2(a) above shall be absolutely forfeited to the Government without prejudice to any other rights of the Government under this Agreement. If such determination 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.

- (c) The Tenant shall have no right whatsoever to claim compensation in any form from the Government if this Agreement is terminated in whatsoever manner.

12. Yielding up

At the expiry of the Term or the determination of this Agreement for whatever reason-

- (a) the Tenant shall remove all articles from the Stall at his own expense, surrender the Stall together with all fixtures and fittings therein in vacant, clean and ready to operate condition, and deliver up possession of the Stall. If 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. The Government shall be entitled to recover all costs incurred due to such disposal from the Tenant.
- (b) the Tenant shall remove at his own expense all alterations and additions (except for those permitted to be retained by the Government) made during the Term, and to make good any damage caused by such removal. Otherwise, the Government shall be entitled to recover all costs incurred due to such removal and making good.

13. Notice

Any notice (including demand note) required to be served to the Tenant under this Agreement shall be sufficiently served if 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:

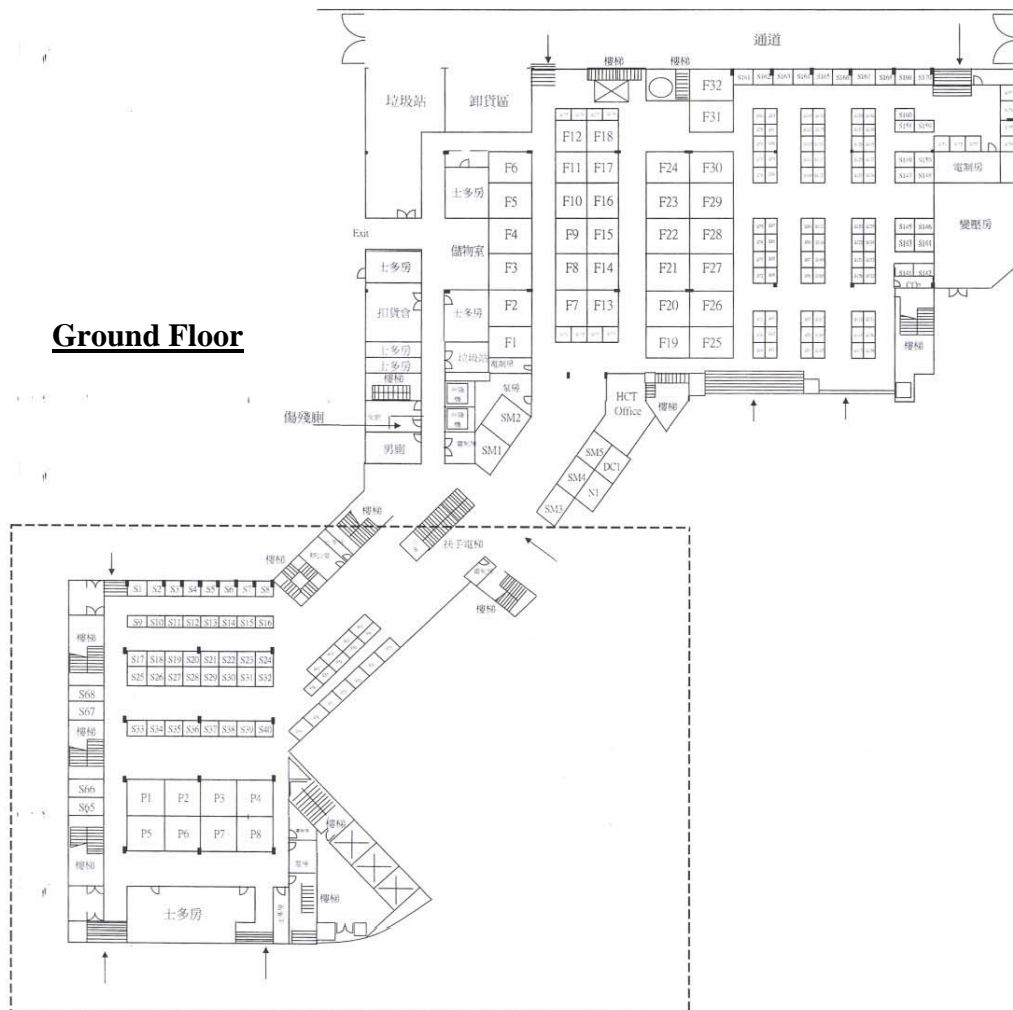
Tenant's
recent photo

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 platform or display area demarcated by yellow line)
RENT	:	(calculated on a monthly basis)
AIR-CONDITIONING CHARGE	:	(calculated on a monthly basis)
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) month's Rent and 2 (two) month's 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.