

## Guidelines for Retail Leasing in China

*While retail sales in China are growing by around 18% annually, China has become the world's fastest-growing retail market, and maybe one day be the biggest. Foreign chains from different sectors are piling in. For most foreign investors, the most important thing to start a business is to find a location and enter into a lease agreement. For years of experience representing clients in business start-ups, we prepare a practical guideline for your concern.*

### **A typical lease agreement will cover:**

**Premises Usage** Normally usage of leased premises shall be commercial, or as specified in relevant certificate as retail/wholesale, accommodation or catering, etc.

**Space Calculation** Net area is the operation area under the exclusive use of the operation of tenant. Usually net area constitutes 50%-70% of gross area in retail property.

**Typical Lease Term** The usual lease term is 5 years for small retails and 15-20 (20 at top) years for big tenants, (i.e. hypermarket, electronics megastore etc). Sometime right of renewal is negotiable.

**Rents and Deposit** Rents are quoted in RMB per square meter per day. Building area may be quoted on gross or net basis. Combination of turnover rent and fixed rent is applied sometimes in shopping malls. Usually a security deposit of 3 months' gross rent & management fee is required.

**Rent Indexation** Usually rent indexation is agreed depends on inflation, while sometime it is hard for the landlord to predict inflation, rent can be adjusted several years later by comparison with the market level.

**Handover Condition** It depends on the lease, typically the landlord provides a sprinkler system, an air-conditioning system and basic lighting. 45 days fit-out period is usually provided, and can be up to 3 months for large stores. Occasionally some modern shopping centers are leased with a finished floor, painted walls and ceilings. Street shops are usually leased as "bare-shell".

**Tenant Alteration** Internal decoration plans must be submitted to the landlord and relevant government bureau for approval before the work begins. Fire protection inspection must be done before the tenant can start a business. Usually all these works are at the tenant's cost.

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**Car Spaces and Advertising** Usually car spaces are shared with other tenants with exception of exclusive rights to some big retailers. It is always agreed where and how the tenant can advertise within the building or shopping-mall, with or without additional fees.

**Filing of the Lease Agreement** Not a compulsory procedure for lease agreement to be legally binding, while it is still recommended filing the lease agreement with local housing bureau to defend the tenant's right against any other third parties. Usually the stamp duty (1‰ of the rent for each party) arising from such filing is borne by both parties.

**Right of Sublease** It depends on the operation style of the tenant, usually some restriction, such as limitation of business model or brand, will be imposed to the tenant while allowing sublease certain part of the premises.

**Non-competition** For the Tenant's sake, especially for those planning to open supermarkets or media centers, it is recommended to exclude competitors within the same shopping-mall or building by input non-competition clause in the lease agreement.

**Expiry of Lease** Usually the tenant is required to restore the space to original condition or bear reinstatement costs. For big retailers, it is negotiable.

**Lease Termination** By contract or from force majeure. For the tenant, penalties for early termination may include deposit or sometimes decoration compensation and future income compensation, while for the landlord, being entitled of a right of early termination means uncertainty to the tenant of its business plan, which is therefore not recommended for the tenant's sake.

For more information, please contact Michael Qu

Email: [gugin@co-effort.com](mailto:gugin@co-effort.com)

Phone: 86- 21-68866151-152; 0086-13817878607

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