

# UK Pub Industry Framework Code

## Sixth Edition



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### Introduction

This is the sixth revision to the Industry Framework Code of Practice which, together with its accompanying processes and procedures, has been put in place in order to codify and to continue to improve the commercial relationship between the pub owning company and its tenants and lessees.

Pub owning companies offer a wide variety of different business models and elements of the IFC are common to all tied agreements.

The Industry Framework Code:

- Provides protection for prospective, new and existing tenants and lessees, consisting of small businesses and individuals
- Encapsulates industry good practice on the letting of tied pubs which pub owning companies have to meet and which is designed to deliver benefits to both parties to the agreement
- Promotes transparency by requiring full disclosure of all relevant and appropriate information to ensure both parties are equipped to enter into a commercial negotiation and upon which tied lessees can rely to make a considered business decision
- Requires pub owning companies to produce their own codes of practice which may include references to other matters but must not contradict or weaken the provisions contained in the IFC
- Requires company codes to be re-accredited every three years from formal implementation in 2013
- Provides for an alternative dispute resolution mechanism to resolve disagreements arising at rent reviews (PIRRS) and those relating to the IFC, company codes, company practices and behaviour (PICA Service)

One of the principal changes contained within this revision is the establishment of an over-arching self regulatory body which will, amongst its remit, oversee the Code and ensure that the mechanisms that have been put in place to monitor the impact of the Code are established and effective.

Types of agreements **with the following characteristics** are specifically covered by the IFC, **irrespective of what they are called or how they are marketed:**

(i) **Tenancy Agreements**

Tenancies are typically agreements with a short period of tenure around 3-5 years. Tenants are likely to be “tied” for a range of drinks with the pub owning company responsible for the upkeep of the property. Such tenancy agreements fall within the Landlord and Tenant Act 1954 and provide security of tenure and the facility to determine the rent on renewal of the agreement through the Courts if the rent cannot be agreed by mutual consent.

The IFC requirements for those companies operating tenancy agreements within their pub estates are contained in Part Two of this document.

(ii) **“Contracted-Out” Tenancy Agreements**

Companies may also offer fixed term tenancy agreements that are “contracted-out”, which are similarly “tied” agreements. Such agreements provide that tenants and/or the pub owning company may give notice during the course of the tenancy, a period of notice to be agreed, but do not provide security of tenure and therefore no agreement to renew the agreement at the end of the term. Rents are subject to re-negotiation on renewal of the tenancy, if granted, and are not subject to protection under Landlord and Tenant Act 1954.

(iii) **Lease Agreements**

A lease agreement enables lessees (individuals or small companies) greater operational flexibility and to assign the lease. A wide variety of lease agreements are available, varying in length from five years upwards. Leases usually come with greater repairing obligations and a tie for beer and other products. Leases may also contain other purchasing obligations. Leases are governed by the Landlord and Tenant Act 1954.

**More rigorous self-regulation of assignable leases has been deemed to be appropriate and companies wishing to offer such leases will need to meet additional obligations. These are contained in Part Three of this document.**

**Temporary agreements**

There are a number of temporary agreements which are not covered by the Code. An example of these are Tenancy At Will (TAW) agreements **and tenancies of one year or less**. These are short-term agreements terminable on short notice and which are used to cover either temporary arrangements or interim arrangements while longer term agreements are finalised. As a consequence, TAW agreements DO NOT fall within the provision of the Industry Framework Code.

Pub companies that agree to abide by this Code of Practice undertake to prepare their own codes of practice which must incorporate all the relevant provisions of the IFC as it relates to either lease agreements and/or tenancy agreements.

The over-riding principles of the Code remain the same and are enhanced in this revision to it. Companies which subscribe to the IFC agree to:

- abide by its terms and to act at all times in the spirit with which the Code has been compiled;
- act with integrity and honesty at all times and conduct business in a professional and fair manner;
- be transparent about their terms of business **and other dealings**, particularly any charges made or costs passed on and the way in which rent has been assessed;
- deal with complaints speedily and fairly, in accordance with a clearly defined internal dispute mechanism and with access to independent dispute resolution where appropriate if such a mechanism fails to resolve the complaint;
- **publish an annual statement of compliance where the company operates 100 or more leases.**

In addition to the information requirements set out in the Code, pub owning companies also undertake to **respond to** all reasonable additional requests for information and where this is not available, the reasons for this must be disclosed. **In particular, information which may be used in third party determination of rent should not be unreasonably withheld and should be shared on request, subject to appropriate confidentiality agreements.**

The IFC also places obligations on lessees to ensure that they are fully equipped to make informed commercial decisions. It includes requirements or recommendations for tenants and lessees to take professional legal, valuation, property and business advice.

The Code also sets out a requirement for prospective tenants/lessees to undertake training to ensure they fully understand the implications of a pub tenancy/lease and further places obligations on lessees wishing to assign their lease.

**Lessees are advised not to take agreements with companies which do not have an accredited code of practice and without seeking professional advice as to the content of the code of practice **and its relationship with the lease.****

**Please note:** any text in **orange** signifies a change from the previous versions of the UK Pub Industry Framework Code. If the text is in an orange box, the text is **bold and increased in font size.**



# Part One

## Legal Status of the Industry Framework Code



## PART ONE:

### LEGAL STATUS OF THE INDUSTRY FRAMEWORK CODE (IFC)

1. The provisions of the IFC will be incorporated into all new lease and tenancy agreements by way of reference to this document. As such the IFC is enforceable and is an integral part of the lease or tenancy agreement.
2. Company codes of practice will include an open and unlimited offer to apply the provisions of the IFC to all their existing leaseholders and tenants. Such leaseholders and tenants will be entitled to the benefits of the IFC and can avail themselves of the benefits of the current IFC at any time by invoking this open and unlimited offer. This can be initiated either:
  - by expressing an interest to accept the offer and signing an agreement to that effect;
  - or through the action of the tenant or lessee by way of a complaint lodged with PICA-Service;
  - or through a court action with the intention of placing reliance on the provisions of the IFC.
3. In both cases (new and existing tenants or lessees) the IFC will be binding on the Company and the tenant/leaseholder and used in the pursuance of a claim of non-compliance.
4. The Code will also be binding on successors where it is incorporated in the lease by way of a Reference in new agreements since it forms part of the basis on which the original agreement was entered into. Similarly the open and unlimited offer by the company will be available to any leaseholder who acquires the lease through an assignment. If existing lessees want a deed of variation to reference the IFC in the terms of their agreement, this will be provided on request and at the lessee's expense. A standard industry Deed of Variation is available and the lessee is free to take their own legal advice to ensure costs are minimised. In order to ensure this protection is extended to cover successors in title, where the landlord's interest in the property is disposed of to a company which does not have an accredited code of practice, reference to the IFC will be incorporated in the lease by means of a Deed of Variation. This will be effected automatically as part of the disposal process and will be at the lessor's expense.
5. The IFC is not capable of being altered unilaterally and future revisions to the Code will be carried out by the IFC Self Regulatory Board ('the Board' - members to be confirmed.) The content and operation of the IFC will be monitored and reviewed periodically by the Board. The frequency and terms of reference of these reviews will be determined by the Board.
6. The legal status of the IFC must be described and included in company codes of practice.

7. Company codes must include reference to the dispute mechanism available through the company and beyond, with particular reference to PICA-Service and in accordance with the relevant clauses on 'Dispute Resolution' in parts two and three of the IFC.
8. The procedures for dealing with any dispute, about the application of the Code by pub companies are described in Clauses 89-93 in Part Two of the Code and Clauses 204-208 in Part Three of the Code.



## Part Two

# Industry Framework Code (IFC) for Companies Operating Tied Tenancy Agreements





## PART TWO: INDUSTRY FRAMEWORK CODE (IFC) FOR COMPANIES OPERATING TIED TENANCY AGREEMENTS

### Pub Owning Company Obligations

9. It is a requirement for membership of the British Beer & Pub Association (BBPA) that all pub owning companies operating tied tenanted pubs are required to produce a code of practice based on the principles set out in this Code and obtain accreditation from the British Institute of Innkeeping Benchmarking & Accreditation Service (BIIBAS).
10. Other signatory bodies agree to use their good offices to encourage all pub owning companies to adopt and comply with the IFC and to exceed the core principles set out herein.
11. A full copy of the company's own code of practice must be provided to all new and existing tenants and any successor in title.
12. All new tenancy agreements must include the Industry Framework Code by Reference contained within the agreement.
13. Company codes must be re-accredited every three years from the date of the previous accreditation. Companies must submit their codes three months prior to the due date for re-accreditation, along with the information required by the Accreditation body (BIIBAS) in accordance with those requirements which will be published on the BIIBAS website which may be amended from time to time as agreed by the signatories to the IFC.
14. Company Codes must be re-accredited if changes of a substantive nature are initiated by the company. Any such changes must NOT depart from the requirements of the IFC. Minor changes to company codes which address companies practices that are not contained within the IFC should be advised to the accreditation body BIIBAS, who will advise as to whether re-accreditation will be required or not.
15. Companies will facilitate and co-operate with BIIBAS in their performance of checks which they may deem to be necessary.
16. The IFC will be displayed on the signatory bodies' websites and accredited pub companies must publish the IFC on their websites.

17. Codes prepared by members of the BBPA shall bear the BBPA logo and the BIIBAS logo to indicate compliance with the Industry Framework Code and the BII's own standards contained within the accreditation process.
18. Company codes may address other issues but must, in the first instance, comply with all the requirements of the Industry Framework Code.

## Pre-Entry Requirements for Tenants

19. Before a prospective tenant is offered a substantive agreement, they **MUST** meet the following requirements.
  - Hold a personal licence<sup>1</sup>
  - Obtain accredited pre-entry training (PEAT) to enable them to evaluate and understand the contract they are seeking to enter into.
20. Company codes will specify that the pre-entry training (PEAT) is to be completed a minimum of five working days prior to the agreement of substantive terms.
21. Such training must meet Qualification Curriculum Authority accredited standards.
22. Prospective tenants must demonstrate they have taken proper independent professional advice prior to accepting a tenancy and that such advice has been used to prepare a business plan, unless a waiver has been applied.
23. Further advice and information for tenants on business planning and benchmarking tools are available from the FLVA, BII and ALMR.
24. Prospective tenants must take professional legal and business advice which should be used to prepare an appropriate business plan.
25. Company codes should require prospective tenants to prepare a Business Plan which will include estimations of incomes and related costs. Prospective tenants should consult their financial advisors on the effects of changes on the business plan, both positive and negative.
26. Business plans should be prepared independently by the tenant or prospective tenant and are not to be confused with the pub owning company's rent assessment. Further information on the form and content

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<sup>1</sup> Not applicable where the prospective tenant/lessee is a company or where a relative or manager holds a personal licence.

of rent assessments and the role of shadow profit and loss accounts is contained in Clauses 46-64 below.

27. Tenants and their advisers' attention should also be drawn to RICS guidance which provides advice to valuers<sup>2</sup> on the matters to which they should have consideration.
28. Company codes will advise prospective and existing tenants about the availability of industry Benchmarking Reports which may assist with the preparation of their business plan<sup>3</sup> and in particular assist with market comparisons under RICs guidance.
29. A template P&L prepared for use in business planning is available from the FLVA, BII and ALMR who can also provide further advice and information.
30. Some or all of the above requirements may be waived, at the company's discretion, in cases where the prospective tenant is suitably qualified through experience and achievement to rely on their judgement or is a company of sufficient standing.
31. A waiver may be applied where:
  - Applicants are multiple retailers with a number of other pub or bar premises
  - Applicants can demonstrate at least three years recent experience of running a successful tenanted or leased pub business
  - Applicants can demonstrate at least three years' relevant business management experience
  - Applicants have an existing successful lease or tenancy with the Company
32. Companies will require prospective tenants to sign an exemption agreement signifying that the requirements for pre-entry training and or professional advice have been waived in accordance with the statement of qualification for exemption made by the prospective tenant.

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<sup>2</sup> RICS Guidance Paragraph 7.18: "The supply tied tenant, aside from paying property rent and in some cases a share of machine income, also pays the wholesale prices of the supplying landlord, which are usually higher than those the lessee would pay in the open market. The tenant may compare its own property with the circumstances of being free of a supply tie and consider the profit achievable under those circumstances."

<sup>3</sup> Including the ALMR Benchmarking Report and the BBPA "Running a Pub: A cost guide for lessees/tenants" .



## Minimum Requirements for Company Codes of Practice

33. The key principles set out below must be followed to ensure sufficient information is provided to enable the “reasonably efficient operator ” to understand the nature of the pub business being offered and how this will be embodied in a tenancy agreement.
34. Information provided by the company should be sufficient to allow a thorough evaluation of the business opportunity and the preparation of a detailed business plan to enable a considered commercial decision to be made.
35. All contracts will be fair, reasonable and comply with all legal requirements.
36. Protection is afforded to tenants under Part II of the Landlord and Tenant Act 1954, as amended, for premises in England and Wales and, unless “contracted out” in accordance with the procedures set out in the Act. For premises in Scotland, protection is afforded by the provisions of the lease and the Company’s policy in relation to lease expiry.
37. Initial heads of agreement covering the principal elements/substantive terms of a tenancy and all relevant and appropriate information detailed below will be supplied to prospective tenants at the outset with a full copy of the agreement before they are asked to sign any commitment.
38. Details of the business opportunities offered by the company will be described including the types of tenancy agreements available and the period of tenure, any purchase obligations such as a beer tie, amusement machine tie and any other product ties and whether they would be willing to consider discussing amendments to standard terms or not.

## Business Relationship/Development Managers (BRMS/BDMs)

39. Company codes will set out provisions and commitments governing the competence and future progression of BRMs/BDMs, including qualifications and on-going training<sup>4</sup>.
40. Codes will set out the role of BRMs/BDMs and the support and professional guidance they will provide including the content and application of the IFC and associated self-regulatory mechanisms. Company codes will also include the company’s commitment to

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<sup>4</sup> BII is developing an accredited training qualification for BRMs/BDMs.

continuous professional development and training for BDMs/BRMs within a time period specified by the company. **In keeping with the code, BDMs/BRMs are required to act in a professional and responsible manner in their dealings with tenants.**

41. BRMs/BDMs must receive training before carrying out a rental negotiation.

## **Business Support**

42. Company codes will explain how the relationship between the company and the tenant will be conducted during the operation of the tenancy so that the business opportunities presented by the outlet can be exploited to mutual benefit.
43. Codes of practice will describe the range of support programmes and advice which may be available through the company<sup>5</sup>. Such support might typically include:
  - Commitment to assess capabilities and training needs of tenants and staff
  - Licences and any relevant training requirements
  - Business management advice (tenants will be advised to obtain professional services in areas such as finance, stocktaking and book-keeping)
  - Brand promotion, merchandising and provision/maintenance of dispense equipment
  - Outlet promotion and marketing
  - Procurement benefits
  - Rating advice
  - Landlords support – external decoration, signage, building repairs (including car parks and gardens)
44. Material Changes/Exceptional Circumstances: company codes will set out the company's policy for dealing with requests for assistance from competent tenants arising from circumstances where they experience business difficulties which are beyond their control.

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<sup>5</sup> Company Codes must refer to the support provided but are not bound to provide the examples listed nor are they limited by them.

## Rent Assessment

45. **Rent assessments** are used by pub owning companies in the preparation of rent negotiations.
46. All initial rent assessments and renewals must be conducted in accordance with the RICS guidance<sup>6</sup> prevailing at that time and signed off by the company as meeting this requirement. This includes the disregarding of any goodwill and the effects of the tenant improvements. Company codes will encourage tenants to seek advice from a suitably qualified trade valuation advisor before accepting a proposed rent.
47. The guidelines for rent assessment are established independently by RICS and applicable to all tenancies. RICS keeps its rent assessment guidelines under review. Amongst other matters which the guidelines may take into account are any resulting legislative changes and court rulings.
48. Any resultant changes arising from such developments of the guidelines will be adopted and applied to all tenancies on review as and when they are published.
49. A “rent assessment statement” shall be agreed for all new tenancy agreements and for the purposes of rent reviews. The Rent Assessment Statement will be based on a shadow P&L prepared by the pub owning company in good faith, based on reasonable assumptions and will be produced, drafted and certified by a properly competent individual.
50. The rental assessment model will be based on a lawful application of statute and common law. Companies will ensure that the prospective tenant is aware of the basis of the rental assessment (FMT) and how the market rent for the property is established. The setting of initial rent and its subsequent review will be handled fairly, with reasonable allowances made for costs and sustainable trade.
51. **A shadow profit & loss account** will form part of the rent assessment. Shadow profit & loss accounts are used by pub owning companies in the preparation of rental assessments for new tenancy agreements, rent reviews and renewals. Shadow profit & loss accounts provide the basis of rent assessments but are not substitutes for business plans which are for

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<sup>6</sup> RICS Guidance note - The capital and rental valuation of public houses, bars, restaurants and nightclubs in England and Wales <http://www.bii.org/documents/703>



the tenant to prepare and consider when seeking an agreement or reviews of the rent.

52. Shadow profit & loss accounts are not intended to be nor must they be taken to be projections of profit. Evaluation of the business prospects and profitability are a matter for the tenant and business planning.
53. A Shadow profit & loss (P&L) account will be prepared by the pub owning company in good faith based on reasonable assumptions. The shadow P&L will contain sufficient detail to enable a prospective tenant to take proper professional advice upon the terms, conditions and effect of the tenancy being offered.
54. Details of volume purchased directly from the company over the past three years will be provided to prospective tenants where available. Precise history of turnover and overheads will not always be available as such information rests with the existing or former holders of the tenancy.
55. Companies will ensure that a responsible officer of the company or its agent involved in obtaining and/or evaluating the supporting material provided in preparing the rent assessment will have visited the premises in question within at least three months prior to the assessment being undertaken.
56. The same information that is provided at the commencement of new tenancy negotiations must be provided to all tenants at the start of a rent review negotiation.
57. Information which may be used in third party determination of rent should not be unreasonably withheld and should be shared on request, subject to appropriate confidentiality agreements.
58. Companies will seek to comply with any reasonable request for further information relevant to the rent assessment from the tenant and/or their professional advisors. Where such information is not available the reason for this must be disclosed.
59. Prospective tenants will be advised about the availability and where to find industry benchmarking reports which may assist with the preparation of their business plan<sup>7</sup>.

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<sup>7</sup> Including the ALMR Benchmarking Report and the BBPA "Running a Pub: A cost guide for lessees/tenants."

60. When calculating gross profits for tied pubs the prices charged to the tenant by the pub owning company in the relevant tied price list should be used.

## Rent Review and Renewals

61. Company codes will include a specific timetable for information to be provided in advance of rent negotiations, rent review and renewals. All relevant information, including a rent assessment, must also be provided as part of the renewal process.
62. Company codes will include advice that tenants seek appropriate professional advice when negotiating rent reviews and/or renewal of agreements.
63. Company codes will specify the process by which a contracted-out agreement might be renewed, including the timeframe of notification to renew or otherwise.

## Indexation

64. Company codes will confirm that the agreement specifies which index is to be used, the date on which the rate will be assessed and applied as well as the frequency of any adjustment. Company codes should encourage tenants to take advice on the effect of indexation on their business plan and their income over the rental period.
65. Where a tenancy refers to indexation of rent by reference to the RPI or the CPI, pub companies will notify their tenants that the adjustment in the rent may be upwards or downwards, according to the movement of the Index at the time.

## Upwards Only Rent Reviews (UORR)

66. UORR clauses must not be included in new tenancy agreements or subsequent renewals.
67. Some existing agreements may contain UORR clauses and, in such circumstances, company codes of practice will make it clear they will not enforce them. In addition, if tenants want a side letter/deed of variation to that effect it can be provided though at the tenant's expense. Companies will also provide tenants with the opportunity to convert to new agreements without an UORR at no less favourable commercial terms if terms can be agreed.

## Price List

68. The pub owning company's current and relevant price list will be supplied (under the terms of the agreement for tied and other products) which will include notification about any imminent changes.
  - Where beer is supplied under a tie, details of the range of products available will be provided, including the **national** prices charged by **the company for these products**, qualifications for discount and whether the company will allow a guest beer supplied direct for a small brewer to be purchased outside the tie.
  - Where wet products other than beer are also supplied, the terms of the purchase obligations attached to these products will be made clear according to the type of agreement. An outline of trading terms (eg. credit/payment terms) will also be provided.

## Insurance

69. **Company codes must make it clear whether the company will maintain and meet the cost of insurances for the premises or whether the cost of such insurance is to be arranged by the company and re-charged to the tenant. Where the company makes a charge the following clauses in this section apply.**
70. Full details of the insurance schedule (to include all aspects of cover provided), a **summary of cover** and the charges payable to the company will be given to the tenant together with any excess applicable. Companies will "price-match" on any like-for-like **policies (based on realistic comparable terms)** identified by the tenant **and will provide all necessary information on request to enable a comparable quotation to be sought.**
71. In the event that the tenant is able to demonstrate that such insurance can be secured at a lower price, for the same degree of cover, the Company will recompense the difference in the charge.
72. **Companies re-charging for insurance cover will do so only in accordance with the policy and this charge will be clearly and separately shown in the shadow profit & loss account that is included in the rent assessment statement. Company codes will make specific reference to the insured risks to the pubs to which the charge refers.**



## Amusement Machines

73. Company policy with regard to the supply and operation of tied amusement machines on the premises<sup>8</sup> will be provided within company codes.
74. Relevant information will include the terms of supply (whether or not a machine tie exists), number and siting of machines, arrangements for the collection of cash, machine-management support provided and details of how the landlord/tenant share of machine income will be assessed.
75. Codes will specify the distribution of machine income between the company and the tenant.
76. Where AWP machines are tied, and the income is shared, such income may not be included in the rent assessment statement or the “divisible balance” and that the income may only be shared once.
77. Companies may not apply royalty charges or up-front access payments on new agreements coming into force after the implementation of Revision 6 of the IFC. Such charges will be phased out from existing agreements at the end of the machine contract term or the occasion of the next due rent review or on a renewal of an existing agreement.
78. The basis of the calculation of any management or administration fees charged must be transparent, clearly explained and justified. The detail of the charges to be applied and the services which is will cover must be provided to the tenant in advance of an agreement being signed or a charge being applied. Administration charges must be reasonable and must relate solely to the operation and maintenance of those machines covered by the purchase obligation. Such charges must be deducted before the agreed distribution of machine income is made.
79. Tenant income which derives from amusement machines under a purchasing obligation will not be included in the rent assessment statement and will be shown below the ‘Divisible Balance’. Where such income is not subject to a purchase obligation, the net income may be included in the pub income and assessed for rent. The net income is that accruing to the tenant after rent, maintenance and other such charges are taken into account.

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<sup>8</sup> This will include category C and D machines, skill prizes machines, pool tables and similar equipment.

## Flow Monitoring Equipment

80. Where pub companies install flow monitoring equipment and intend to use such equipment to monitor purchasing obligations, such companies must develop and include a protocol setting out the terms under which flow monitoring equipment is to be installed, calibrated and the information obtained made available to tenants.
81. Evidence, other than that provided by flow monitoring equipment, must also be provided before taking enforcement action on purchasing obligations.
82. Details for inclusion in company protocols are set out in Annex C.

## Capital Developments

83. Company codes will state the company policy regarding potential investment opportunities for improvements and refurbishments and any implications for rent.

## Pub Premises

84. A full description of the pub building will be provided, including:
  - details of the premises licence and any conditions attached thereto as well as any enforcement action taken during the previous two years, where known;
  - to the best of knowledge, information about any material changes of commercial conditions likely to appear in the area<sup>9</sup> and how these might influence the business opportunity available.
85. Details of any restrictions on the uses to which the premises may be put (eg. planning constraints on types of trading and/or hours, disclosure of Use Classes – A3 or A4) will be provided.

## Dilapidations

86. Companies will provide an early breakdown of any dilapidations to allow tenants time to put right and advise whether fixtures and fittings will be purchased and, if so, arrangements for payment.

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<sup>9</sup> This should include any developments to nearby premises in the pub owning Company's estate.

## Surrender

87. Company codes will set out how they will deal with any requests for surrender of the tenancy.

## Restrictive Covenants

88. Company codes will make their policy on restrictive covenants clear.

## Dispute Resolution

89. Company codes should explain the procedures to be adopted where either party feels that the provisions of the company's code have not been followed. Where the tenant believes that he is the aggrieved party, the procedures should ensure that the matter is properly considered at an appropriately high level of management in the Company concerned, and at a level of management higher than that at which the relevant decisions were initially taken.
90. The adoption of codes by companies in line with the IFC provides a procedure for the resolution of differences. It is nevertheless acknowledged that in individual cases, tenants may feel that a company has not properly followed the procedures set out in its code.
91. Company codes will include timescales for responses to all written complaints and settlements of cases. Such timetables will specify reasonable timescales within which the company will respond to the initial complaint and within which it will make its final response. Where these timescales are not complied with or where the tenant receives no response or acknowledgement, the matter may be referred direct to PICA-Service in line with the service protocols (currently 28 days).
92. Where a contractual rent review is not settled between two parties, the matter may be referred to the Pub Independent Rent Review Scheme (See PIRRS clauses 94-98).
93. For other types of dispute with the exception of contractual rent review, where a resolution is not considered possible or is not achievable, the complaint may be referred either to the Courts, where the complaint concerns the adherence to the Framework Code of Practice or to PICA-Service for independent resolution, provided that the company complaints dispute mechanism has first been completed (see Clauses 99-103).

## Pub Independent Rent Review Scheme (PIRRS)

94. Company codes should set out the procedures available where the rent review is not agreed including the company's internal procedures and the option for referral to an independent expert through PIRRS or arbitration.
95. Referrals to PIRRS can be made in respect of rent reviews or renewals.
96. Company Codes must include details about the Pub Independent Rent Review Scheme (PIRRS) and reference to the website [www.pirrscheme.com](http://www.pirrscheme.com).
97. Irrespective of the terms of the tenancy agreement the landlord grants the tenant the right to elect for a referral to the PIRRS scheme and agrees to be bound by the expert valuation delivered through the PIRRS scheme. This will not remove the right to arbitration but the tenant will waive such a right if the option to refer to PIRRS is taken.
98. Codes must also contain the company's commitment to support the PIRRS scheme which is a condition of BIBAS accreditation.

## Pub Independent Conciliation & Arbitration Service (PICA-Service)

99. PICA-Service provides an independent service, available at low cost to tenants. Disputes may be referred either after pursuing remedies through the company and failing to reach a satisfactory resolution or where the company fails to respond to an initial written outline of grievance, and in accordance with PICA-Service protocols.
100. Company codes should set out the procedures available for tenants, including the Company's internal procedures, for the resolution of disputes relating to either the Industry Framework Code, the company's own code or its behaviour/relationship, and the option for referral to an Independent Panel through PICA-Service or other arbitration or through due legal process in the courts.
101. Company Codes must include details about PICA-Service and reference to the website, [www.picaservice.com](http://www.picaservice.com).
102. Irrespective of the terms of the tenancy agreement the landlord grants the tenant the right to elect for a referral to the PICA-Service scheme and agrees to be bound by the decision of the independent arbitrator delivered through PICA-Service. As part of the application process a dispute will not be able to progress to the final hearing stage if the tenant does not sign an

acceptance form to the terms and conditions. The relevant pub owning company will be required to sign an acceptance form to the same effect and will abide by the findings of the panel. The acceptance of PICA-Service terms and conditions cannot forfeit the tenant's rights under the tenancy agreement, nor can the acceptance of the terms and conditions prevent the parties seeking further redress through the courts. However, it is expected that both parties participating in PICA-Service will abide by the findings of the PICA-Service Panel.

103. Company codes must also contain the company's commitment to support PICA-Service which is a condition of BIIBAS accreditation.



# Part Three

## Industry Framework Code (IFC) for Companies Operating Lease Agreements



## PART THREE: INDUSTRY FRAMEWORK CODE (IFC) FOR COMPANIES OPERATING LEASES

### Pub Owning Company Obligations

104. It is a requirement for membership of the British Beer & Pub Association (BBPA) that all pub owning companies operating tied leased pubs are required to produce a code of practice based on the principles set out in this Code and obtain accreditation from the British Institute of Innkeeping Benchmarking & Accreditation Service (BIIBAS).
105. Other signatory bodies agree to use their good offices to encourage all pub owning companies to adopt and comply with the IFC and to exceed the core principles set out herein.
106. A full copy of the company's own code of practice must be provided to all new and existing lessees and any successor in title.
107. All new lease agreements must include the Industry Framework Code by Reference contained within the agreement.
108. Company codes must be re-accredited every three years from the date of the previous accreditation. Companies must submit their codes three months prior to the due date for re-accreditation, along with the information required by the Accreditation body (BIIBAS) in accordance with those requirements which will be published on the BIIBAS website which may be amended from time to time as agreed by the signatories to the IFC.
109. Company codes must be re-accredited if changes of a substantive nature are initiated by the company. Any such changes must NOT depart from the requirements of the IFC. Minor changes to company codes which address companies practices that are not contained within the IFC should be advised to the accreditation body BIIBAS, who will advise as to whether re-accreditation will be required or not.
110. An annual statement of compliance for companies operating 100 or more leases will be submitted to BIIBAS. The Compliance Statement will report on a range of indicators, as determined by the Regulatory Board, including the number of new lease negotiations entered into; the percentage where a waiver was used; and the number successfully completed; the number of rent reviews, the percentage completed within an agreed time frame and the number referred to PIRRS/PICA-Service.

111. The content requirements for annual statements will be published on the BIIBAS website as may be amended from time to time as agreed by the Regulatory Board.
112. Companies will facilitate and co-operate with BIIBAS in their performance of checks which they may deem to be necessary.
113. The IFC will be displayed on the signatory bodies' websites and accredited pub companies must publish the IFC on their websites.
114. Codes prepared by members of the BBPA shall bear the BBPA logo and the BIIBAS logo to indicate compliance with the IFC and the BII's own standards contained within the accreditation process.
115. Company codes may address other issues but must, in the first instance, comply with all the requirements of the Industry Framework Code.

## Pre-Entry Requirements for Lessees

116. Before a prospective lessee is offered a substantive agreement, they MUST meet the following requirements.
  - Hold a personal licence<sup>10</sup>
  - Obtain accredited pre-entry training (PEAT)<sup>10</sup> to enable them to evaluate and understand the contract they are seeking to enter into.
117. Company codes will specify that the pre-entry training (PEAT) is to be completed a minimum of five working days prior to the agreement of substantive terms.
118. Such training must meet Qualification Curriculum Authority accredited standards.
119. Prospective lessees must demonstrate they have taken proper independent professional advice prior to accepting a lease and that such advice has been used to prepare a business plan, unless a waiver has been applied.
120. Companies will retain the evidence provided by the prospective lessee of any appropriate business, financial, legal, property and rental valuation advice that has been taken.

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<sup>10</sup> Not applicable where the prospective tenant/lessee is a company or where a relative or manager holds a personal licence.



121. Further advice and information for lessees on business planning and benchmarking tools is available from the FLVA, BII and ALMR.
122. Prospective lessees must take professional legal and business advice which should be used to prepare an appropriate business plan.
123. Company codes should require prospective lessees to prepare a business plan which will include estimations of incomes and related costs together with a sensitivity analysis which would examine the business performance on an increase/decrease in business income, the effect of those on costs and profitability and the impact of indexation if appropriate. Prospective tenants should consult their financial advisors on the effects of changes on the business plan, both positive and negative.
124. The business plan should be prepared independently by the lessee or prospective lessee and should not be confused with the pub owning company rent assessment. Further information on the form and content of rent assessments and the role of shadow profit and loss accounts is contained in clauses 160-184.
125. Lessees' and their advisers' attention should also be drawn to RICS guidance which provides advice to valuers<sup>11</sup> on the matters to which they should have consideration.
126. Company codes will advise prospective and existing lessees about the availability of industry Benchmarking Reports which may assist with the preparation of their business plan<sup>12</sup> and in particular assist with market comparisons under RICs guidance.
127. A template P&L prepared for use in business planning is available from the FLVA, BII and ALMR who can also provide further advice and information.
128. Some or all of the above requirements may be waived, at the company's discretion, in cases where the prospective leaseholder is suitably qualified

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<sup>11</sup> RICS Guidance paragraph 7.18: "The supply tied lessee, aside from paying property rent and in some cases a share of machine income, also pays the wholesale prices of the supplying landlord, which are usually higher than those the lessee would pay in the open market. The tenant may compare its own property with the circumstances of being free of a supply tie and consider the profit achievable under those circumstances."

<sup>12</sup> Including the ALMR Benchmarking Report and the BBPA "Running a Pub: A cost guide for lessees/tenants".

through experience and achievement to rely on their judgement or is a company of sufficient standing.

129. A waiver may be applied where:
- Applicants are multiple retailers with a number of other pub or bar premises
  - Applicants can demonstrate at least three years recent experience of running a successful tenanted or leased pub business
  - Applicants can demonstrate at least three years relevant business management experience
  - Applicants have an existing successful lease or tenancy with the Company
130. Companies will require prospective lessees to sign an exemption agreement signifying that the requirements for pre-entry training and/or professional advice have been waived in accordance with the statement of qualification for exemption made by the prospective lessee.

## Minimum Requirements for Company Codes of Practice

131. The key principles set out below must be followed to ensure sufficient information is provided to enable the “reasonably efficient operator<sup>13</sup>” to understand the nature of the pub business being offered and how this will be embodied in a tenancy agreement.
132. Information provided by the company should be sufficient to allow a thorough evaluation of the business opportunity, and the preparation of a detailed business plan to enable a considered commercial decision to be made.
133. All contracts will be fair, reasonable and comply with all legal requirements.
134. Initial heads of agreement covering the principal elements/substantive terms of a lease and all relevant and appropriate information detailed below will be supplied to prospective lessees at the outset with a full copy of the lease before they are asked to sign any commitment.

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<sup>13</sup> RICS Guidance © IVS GN 12, para 3.4: “A market based concept whereby a potential purchaser, and thus the valuer, estimates the maintainable level of trade and future profitability that can be achieved by a reasonably efficient operator of a business conducted on the premises, acting in an efficient manner. The concept involves the trading potential rather than the actual level of trade under the existing ownership so it excludes *personal goodwill*.”



135. Details of the business opportunities offered by the company will be described including the types of lease agreements available and the period of tenure, any purchase obligations such as a beer tie, amusement machine tie and any other product ties **and whether they would be willing to consider discussing amendments to standard terms or not.**

## **Business Relationship/Development Managers (BRMS/BDMs)**

136. Company codes will set out provisions and commitments governing the competence and future progression of BRMs/BDMs, including qualifications and on-going training<sup>14</sup> .
137. Codes will set out the role of BRMs/BDMs and the support and professional guidance they will provide **including the content and application of the IFC and associated self-regulatory mechanisms.** Company codes will also include the company's commitment to continuous professional development and training for BDMs/BRMs within a time period specified by the company. **In keeping with the code, BDMs/BRMs are required to act in a professional and responsible manner in their dealings with tenants.**
138. **Where companies operate 100 or more leases, they shall keep records of training for inclusion in the annual statement of accreditation submitted to the accreditation body (BIIBAS).**
139. BRMs/BDMs must receive training before carrying out a rental negotiation.

## **Business Support**

140. Company codes will explain how the relationship between the company and the tenant will be conducted during the operation of the tenancy so that the business opportunities presented by the outlet can be exploited to mutual benefit.
141. Codes of practice will describe the range of support programmes and advice which may be available through the company<sup>15</sup> . Such support might typically include:
- Commitment to assess capabilities and training needs of lessees and staff
  - Licences and any relevant training requirements

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<sup>14</sup> BII is developing an accredited training qualification for BRMs/BDMs.

<sup>15</sup> Company Codes must refer to the support provided but are not bound to provide the examples listed nor are they limited by them.

- Business management advice (leesees will be advised to obtain professional services in areas such as finance, stocktaking and book-keeping)
  - Brand promotion, merchandising and provision/maintenance of dispense equipment
  - Outlet promotion and marketing
  - Procurement benefits
  - Rating advice
  - Landlords support – external decoration, signage, building repairs (including car parks and gardens)
142. Material Changes/Exceptional Circumstances: company codes will set out the company's policy for dealing with requests for assistance from competent lessees arising from circumstances where they experience business difficulties which are beyond their control.

## Rent

143. **Rent assessments** are used by pub owning companies in the preparation of rent negotiations.
144. All **initial** rent assessments, **rent reviews** and renewals must be **produced, prepared and** conducted in accordance with the RICS guidance<sup>16</sup> prevailing at that time **and signed off by the company as meeting this requirement. This includes the disregarding of any goodwill and the effects of the lessees improvements. Company codes will encourage lessees to seek advice from a suitably qualified trade valuation advisor before accepting a proposed rent.**
145. **The guidelines for rent assessment are established independently by RICS and applicable to all leases and tenancies.** RICS keeps its rent assessment guidelines under review. Amongst other matters which the guidelines may take into account are any resulting legislative changes and court rulings.
146. Any resultant changes arising from such developments of the guidelines will be adopted and applied to all leases and tenancies on review as and when they are published. All rent assessments for new agreements must be signed off by a RICS qualified **valuer and those at rent review must be signed off by an appropriately senior company representative as being produced in accordance with RICS guidance.**

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<sup>16</sup> RICS Guidance note - The capital and rental valuation of public houses, bars, restaurants and nightclubs in England and Wales <http://www.bii.org/documents/703>

147. A 'rent assessment statement' shall be provided for all new leases and to lessees for the purposes of rent reviews and lease renewals. The rent assessment statement will be based on a shadow P&L prepared by the pub owning company in good faith, based on reasonable assumptions and will be produced, drafted and certified by a properly competent individual.
148. The rental assessment model will be based on a lawful application of statute and common law. Companies will ensure that the prospective lessee is aware of the basis of the rental assessment (FMT) and how the market rent for the property is established. The setting of initial rent and its subsequent review will be handled fairly, with reasonable allowances made for costs and sustainable trade.
149. **A shadow profit & loss account** will form part of the rent assessment. Shadow profit & loss accounts are used by pub owning companies in the preparation of rental assessments for new lease agreements, rent reviews and renewals. Shadow profit & loss accounts provide the basis of rent assessments but are not substitutes for business plans which are for the lessee to prepare and consider when seeking an agreement or reviews of the rent.
150. Shadow profit & loss accounts are not intended to be nor must they be taken to be projections of profit. Evaluation of the business prospects and profitability are a matter for the lessee and business planning.
151. A shadow profit & loss (P&L) account will be prepared by the pub owning company in good faith based on reasonable assumptions. The shadow P&L will contain sufficient detail to enable a prospective lessee to take proper professional advice upon the terms, conditions and effect of the tenancy or lease being offered.
152. The rent assessment containing the shadow P&L account must include the specified minimum content shown in Annex B and in particular will include information on all the income/cost lines. In addition the Company will make the lessee aware of any relevant cost benchmarking figures used to prepare the rent assessment. Providing the necessary content is included, presentation may be determined by companies. All figures used in the shadow profit & loss will be net of tax (VAT and MGD).
153. The assumptions included in the rental assessment model will be explained and supporting evidence where available will be fully justified together with assessment procedures for rent reviews, including those matters that will be taken into account or disregarded by both parties.

154. Details of volume purchased directly from the company over the past three years will be provided where available. **If these details are not available then the company will explain why.** Precise history of turnover and overheads will not always be available as such information rests with the existing or former holders of the tenancy/lease.
155. **Companies will ensure that a responsible officer of the company or its agent involved in obtaining and/or evaluating the supporting material provided in preparing the rent assessment will have visited the premises in question within at least three months prior to the assessment being undertaken.**
156. The same information that is provided at the commencement of new lease negotiations must be provided to all lessees at the start of a rent review negotiation.
157. **Companies will seek to comply with any reasonable request for further information from the lessee and/or their professional advisors relevant to the rent assessment. Where such information is not available the reason for this must be disclosed.**
158. **Information which may be used in third party determination of rent should not be unreasonably withheld and should be shared on request, subject to appropriate confidentiality agreements.**

## **Rent Review and Renewals**

159. Company codes will include a specific timetable for information to be provided in advance of rent negotiations, rent review and renewals. All relevant information, including a rent assessment, must also be provided as part of the renewal process.
160. All relevant information including a rent assessment will be provided to existing lessees no less than six months before the rent review date and the parties should aim to **complete** negotiations within three months after the due date. The lessee may refer a rent review to PIRRS if negotiations are not completed within three months of the due date and no extension has been agreed.
161. **All relevant information including a rent assessment statement must also be provided as part of the renewal process/negotiation.**

162. Company codes will include advice that lessees seek appropriate professional advice when negotiating rent reviews and/or renewal of agreements.

## Indexation

163. Company codes will confirm that the agreement specifies which index is to be used, the date on which the rate will be assessed and applied as well as the frequency of any adjustment. Company codes should encourage lessees to take advice on the effect of indexation on their business plan and their income over the rental period.
164. Where a lease refers to indexation of rent by reference to the RPI or the CPI, pub companies will notify their lessees that the adjustment in the rent may be upwards or downwards, according to the movement of the Index at the time.

## Upwards Only Rent Reviews (UORR)

165. UORR clauses must not be included in new leases or subsequent renewals.
166. Some existing agreements may contain UORR clauses and, in such circumstances, Company Codes of Practice will make it clear they will not enforce them. In addition, if lessees want a side letter/deed of variation to that effect it can be provided though at the lessee's expense. Companies will also provide lessees with the opportunity to convert to new agreements without an UORR clause at no less favourable commercial terms if terms can be agreed.

## Price List

167. The pub owning company's current and relevant price list will be supplied (under the terms of the agreement for tied and other products) which will include notification about any imminent changes.
168. Where beer is supplied under a tie, details of the range of products available will be provided, including the national prices charged by the company for these products, qualifications for discount and whether the company will allow a guest beer supplied direct for a small brewer to be purchased outside the tie.
169. Where wet products other than beer are also supplied, the terms of the purchase obligations attached to these products will be made clear



according to the type of agreement. An outline of trading terms (eg. credit/payment terms) will also be provided.

## Insurance

170. Company codes must make it clear whether the company will maintain and meet the cost of insurances for the premises or whether the cost of such insurance is to be arranged by the company and re-charged to the lessee. Where the company makes a charge the following clauses in this section apply.
171. Full details of the insurance schedule (to include all aspects of cover provided), a **summary of cover** and the charges payable to the company will be given to the lessee together with any excess applicable. Companies will “price-match” on any like for like **policies (based on realistic comparable terms)** identified by the lessee and will provide all **necessary information on request to enable a comparable quotation to be sought**.
172. In the event that the lessee is able to demonstrate that such insurance can be secured at a lower price, for the same degree of cover, the company will recompense the difference in the charge.
173. **Companies re-charging for insurance cover will do so only in accordance with the policy and that this charge will be clearly and separately shown in the shadow profit & loss account that is included in the rent assessment statement. Company codes will make specific reference to the insured risks to the pubs to which the charge refers.**

## Amusement Machines

174. Company policy with regard to the supply and operation of tied amusement machines on the premises<sup>17</sup> will be provided within company codes.
175. Relevant information will include the terms of supply (whether or not a machine tie exists), number and siting of machines, arrangements for the collection of cash, machine-management support provided and details of how the landlord/lessee share of machine income will be assessed.

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<sup>17</sup> This will include category C and D machines, skill prizes machines, pool tables and similar equipment.

176. Codes will specify the distribution of machine income between the company and the lessee.
177. Where AWP machines are tied, and the income is shared, such income may not be included in the rent assessment statement or the “divisible balance” and that the income may only be shared once.
178. Companies may not apply royalty charges or up-front access payments on new agreements coming into force after the implementation of Revision 6 of the IFC. Such charges will be phased out from existing agreements at the end of the machine contract term or the occasion of the next due rent review or on a renewal of an existing agreement.
179. The basis of the calculation of any management or administration fees charged must be transparent, clearly explained and justified. The detail of the charges to be applied and the services which is will cover must be provided to the lessee in advance of an agreement being signed or a charge being applied. Administration charges must be reasonable and must relate solely to the operation and maintenance of those machines covered by the purchase obligation. Such charges must be deducted before the agreed distribution of machine income is made.
180. Lessee income which derives from amusement machines under a purchasing obligation will not be included in the rent assessment statement and will be shown below the ‘Divisible Balance’. Where such income is not subject to a purchase obligation, the net income may be included in the pub income and assessed for rent. The net income is that accruing to the lessee after rent, maintenance and other such charges are taken into account.

## **Flow Monitoring Equipment**

181. Where pub companies install flow monitoring equipment and intend to use such equipment to monitor purchasing obligations, such companies must develop and include a protocol setting out the terms under which flow monitoring equipment is to be installed, calibrated and the information obtained made available to tenants.
182. Evidence, other than that provided by flow monitoring equipment, must also be provided before taking enforcement action on purchasing obligations.
183. Details for inclusion in company protocols are set out in Annex C.

## Capital Developments

184. Company codes will state the company policy regarding potential investment opportunities for improvements and refurbishments and any implications for rent.

## Pub Premises & Schedule of Condition

185. A full description of the pub building will be provided, including:
- details of the premises licence and any conditions attached thereto as well as any enforcement action taken during the previous two years, where known;
  - to the best of knowledge, information about any material changes of commercial conditions likely to appear in the area<sup>18</sup> and how these might influence the business opportunity available.
186. Details of any restrictions on the uses to which the premises may be put (eg. planning constraints on types of trading and/or hours, disclosure of Use Classes – A3 or A4) will be provided.

## Repairing Leases

187. Companies will describe the nature, scope and extent of their policy with regard to repairing covenants.
188. Companies will provide the prospective lessee with details about the nature, scope and extent of their obligations in the Heads of Terms agreement.
189. Prospective lessees will be encouraged to inspect the property thoroughly, seeking independent professional advice on the structure.
190. Company codes must include a recommendation to prospective and new lessees to conduct their own survey of the property, ideally carried out by a professional with experience in the pub market.
191. Companies will provide the prospective lessee with a schedule of condition. This is an agreed description of the condition of the building identifying the state in which it is being provided, drawing attention to any specific problems or features and clarifying what, if any, remedial work is required and expected during the course of the lease. Unless otherwise

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<sup>18</sup> This should include any developments to nearby premises in the pub owning Company's estate.

specified in the terms of the lease as “put”, the assumption will be that the requirement will be “keep” or maintain the building in this condition.

192. This is not a formal survey, but is an assessment signed by both parties of the condition of the building. Both sides are encouraged to retain their own records, to include photographic evidence as appropriate. This schedule of condition should be referenced when preparing wants, dilapidations and will form the basis of agreement on the repair liabilities of the lease agreement offered.

## Dilapidations

193. Companies will provide an early breakdown of any dilapidations to allow lessees time to put right and advise whether fixtures and fittings will be purchased and, if so, arrangements for payment.

## Dilapidations (New Lease Agreements)

194. New lease agreements will describe the extent to which leases will place obligations on the lessee in respect of the requirement to maintain and repair the property and the condition in which the pub should be returned to the company at the end of the lease.
195. Unless otherwise specified in the terms of the lease, the obligation will be to keep rather than put. If put is required, this must be reflected in the initial rent and will be made explicit.
196. Company codes will include a protocol governing the treatment and procedures to be followed in dealing with dilapidations, such protocols will specify:
- The timetable for the review and updating of the original schedule of conditions (no less than six months before the end of the lease)
  - Landlords reserve the right to ensure that any further dilapidations/determinations can be accounted for/added to the schedule at a later date in circumstances where there is clear evidence of new material consideration or developments which could not have been taken into account at an earlier date.
  - The process for agreeing a schedule of wants and repairs in line with the schedule of conditions
  - The period (no less than 12 months) before the end of the lease when a survey will be conducted to determine the extent of dilapidations
  - The process by which any dispute concerning the extent and amount of repairs and making good is resolved.

## Assignment of Leases

197. The assignment of leases places obligations on both the pub owning company and the lessee wishing to assign his lease (assignor). This is to ensure that the potential purchaser of the lease (assignee) is supplied with the same information as would be supplied by the landlord at the commencement of a lease and is able to take his own proper business decisions about the business being offered.
198. Companies will set out clearly how they will respond in a timely way to requests for assignment and explain the implications for disposal of the business. Full details will be provided regarding procedures, professional support/advice available and all relevant fees. Buy back arrangements, if any, will be described and an early breakdown given of any dilapidations to allow lessees time to put right before assignment.
199. **Company codes will make clear the procedures which must be followed by assignors for assignment, including the timetable and level of detailed information which must be provided to the assignee.** The assignor must disclose information as if he were the original landlord and will inform a prospective assignee **of their pre-entry obligations.**
200. All pre-entry requirements (including having a personal licence under the Licensing Act 2003) concerning training or evidence based certification of professional or legal advice shall be capable of being waived by the pub owning company in the case of existing lessees or experienced operators, on production of suitable evidence.
201. Pub companies will not agree to an assignment unless the above requirements have been complied with **but consent will not be unreasonably withheld.**

## Surrender

202. Company codes will set out how they will deal with any requests for surrender of the lease.

## Restrictive Covenants

203. Company codes will make their policy on restrictive covenants clear.

## Dispute Resolution

204. Company codes should explain the procedures to be adopted where either party feels that the provisions of the company's code have not been



followed. Where the lessee believes that he is the aggrieved party, the procedures should ensure that the matter is properly considered at an appropriately high level of management in the Company concerned, and at a level of management higher than that at which the relevant decisions were initially taken.

205. The adoption of codes by companies in line with the IFC provides a procedure for the resolution of differences. It is nevertheless acknowledged that in individual cases, lessees may feel that a company has not properly followed the procedures set out in its code.
206. Company codes will include timescales for responses to all written complaints and settlements of cases. Such timetables will specify reasonable timescales within which the company will respond to the initial complaint and within which it will make its final response. Where these timescales are not complied with or where the tenant receives no response or acknowledgement, the matter may be referred direct to PICA-Service in line with the service protocols (currently 28 days).
207. Where a contractual rent review is not settled between two parties, the matter may be referred to the Pub Independent Rent Review Scheme (See clauses 209-213).
208. For other types of dispute with the exception of contractual rent review, where a resolution is not considered possible or is not achievable, the complaint may be referred either to the Courts, where the complaint concerns the adherence to the Framework Code of Practice or to PICA-Service for independent resolution, provided that the company complaints dispute mechanism has first been completed (see Clauses 214-218).

### **Pub Independent Rent Review Scheme (PIRRS)**

209. Company codes should set out the procedures available where the rent review is not agreed including the company's internal procedures and the option for referral to an independent expert through PIRRS or arbitration.
210. Referrals to PIRRS can be made in respect of rent reviews or renewals.
211. Company Codes must include details about the Pub Independent Rent Review Scheme (PIRRS) and reference to the website [www.pirrscheme.com](http://www.pirrscheme.com).
212. Irrespective of the terms of the lease the landlord grants the lessee the right to elect for a referral to the PIRRS scheme and agrees to be bound

by the expert valuation delivered through the PIRRS scheme. This will not remove the right to arbitration but the lessee will waive such a right if the option to refer to PIRRS is taken.

213. Codes must also contain the company's commitment to support the PIRRS scheme which is a condition of BIIBAS accreditation.

## **Pub Independent Conciliation & Arbitration Service (PICA-Service)**

214. PICA-Service provides an independent service, available at low cost to tenants. Disputes may be referred either after pursuing remedies through the company **and failing to reach a satisfactory resolution or where the company fails to respond to an initial written outline of grievance, and in accordance with PICA-Service protocols.**
215. Company codes should set out the procedures available for lessees, including the Company's internal procedures, for the resolution of disputes relating to either the Industry Framework Code, the company's own code or its behaviour/relationship, and the option for referral to an Independent Panel through PICA-Service or other arbitration or through due legal process in the courts.
216. Company Codes must include details about PICA-Service and reference to the website, [www.picaservice.com](http://www.picaservice.com).
217. **Irrespective of the terms of the lease agreement the landlord grants the lessee the right to elect for a referral to the PICA-Service scheme and agrees to be bound by the decision of the independent arbitrator delivered through PICA-Service. As part of the application process a dispute will not be able to progress to the final hearing stage if the tenant does not sign an acceptance form to the terms and conditions. The relevant pub owning company will be required to sign an acceptance form to the same effect and will abide by the findings of the panel. The acceptance of PICA-Service terms and conditions cannot forfeit the tenant's rights under the tenancy agreement, nor can the acceptance of the terms and conditions prevent the parties seeking further redress through the courts. However, it is expected that both parties participating in PICA-Service will abide by the findings of the PICA-Service Panel.**
218. Company codes must also contain the company's commitment to support PICA-Service which is a condition of BIIBAS accreditation.

# Annexes





## Annex A

### RENT ASSESSMENT STATEMENT FOR TENANCY AGREEMENTS

A rent assessment statement must be provided by the Company to all prospective tenants before reaching a substantial agreement and prior to rent negotiations, in accordance with the provisions contained in Clauses 45-60 of the Industry Framework Code of Practice.

The information to be included in the rent assessment statement is detailed in Clauses 53-60 of the Code. These are to be regarded as the minimum level of detail that must be included but companies are free to provide further information if they so wish and may also chose different format in which to present that information. Companies should ensure that the presentation of the information is clear and set out in their code of practice, since the accreditation process will include an evaluation of the form and content of the rent assessment statement.

For the avoidance of doubt shadow profit & loss accounts must include the following:

- Barrelage figures for the previous three years (if known). If the figures are not available the reason for their omission should be given.
- Sales figures must include separate estimates for draught ales, lagers and ciders and packaged sales of beer, cider and FABs. Sales figures must also include separate figures for wines, spirits and soft drinks.
- The cost figures for wet products as above must as a minimum include a cost line for draught ales, lager and cider which may include packaged alcoholic drinks and a margin provided against the total product range. Companies may choose to provide more detailed cost information and gross margin against different product lines but this is not a requirement since the estimation of gross profit can be determined from the gross margin provided.
- Gross profit margins for wines, spirits and soft drinks must also be shown separately.
- There is a loss of product associated with draught beers and ciders and most companies will include that within the gross margin estimate. The rent assessment does however provide for the inclusion of a 'waste figure' which must be included where it is not included in the gross profit margin and where to exclude such a figure would overstate the gross profit available.
- Similarly the cost of cellar gas, often provided by the company, is included in the margin or listed separately. Companies must make it clear which route they are adopting.
- Where machines are not included within the terms of the lease the estimated income to be derived from them must be shown, net of direct costs, as shown in the example rent assessment contained in this Annex. Where the machines are tied the net income must be shown below the post rent balance.

- Where the company deems it appropriate a place has been provided to include an estimate of the cost of a manager. The indication of such a cost will be provided where an operator should be advised of the effect of such a cost will materially affect the earning potential of the tenant i.e. where the tenant is not intending to provide the labour and expertise to take on the day to day operation of the business.
- The shadow profit & loss account must include an estimate of the costs incurred in running the business. The assessment must include the nearest available bench-marking figures that are the closest to the business model of the pub in question. The estimated costs will therefore not necessarily be those that are shown in the benchmarked costs but will be those that the company believes best reflects the pub in question.



RENT ASSESSMENT: TENANCY AGREEMENTS									
				% Turnover		Prior Three Years Beer Volumes			
<b>Sales</b>						Barrelage	Year 1	Year 2	Year 3
Draught Lager		£86,000		32.5%		Date			
Draught Ale		£50,000		18.9%					
Draught Cider		£14,000		5.3%					
Packaged Beer		£7,500		2.8%		Year commencing..			
Packaged Cider		£6,500		2.5%					
Total Draught/Packaged Beer/Cider		£164,000							
Packaged FABs		£1,000		0.4%					
Wines		£25,000		9.4%					
Spirits		£10,000		3.8%					
Soft Drinks		£10,000		3.8%		No. Barrels Beer	260	250	240
Total Drinks Sales		£210,000		79.2%					
Food		£50,000		18.9%					
Accomodation		£0		0.0%					
Other		£5,000		1.9%					
Net Machine Income (Free of Tie Only)		£0		0.0%					
Total Sales (Turnover)		£265,000		100.0%					
Wet GP%				51.0%					
Dry GP%				60.0%					
<b>Gross Profit</b>									
Wet		£107,100		107100					
Dry		£30,000		30000					
Accomodation		£0							
Other		£5,000							
Net Machine Income (Free of Tie Only)		£0							
Total Gross Profit Cash		£142,100							
				<i>Costs as % of Turnover</i>		<i>Benchmark Costs %</i>			
Wages, Salaries & Other Staff Costs		£33,920		12.8%		12.8%			
Rates		£7,950		3.0%		2.9%			
Utilities		£10,600		4.0%		3.6%			
Repairs, Maintenance & Renewals		£5,300		3.0%		4.0%			
Building Insurance		£1,590		0.6%		0.6%			
Marketing & Promotion Costs		£13,250		6.0%		6.5%			
Telephone		£530		0.2%		0.2%			
Consumables		£1,325		0.5%		0.5%			
Waste/Cleaning/Hygiene		£1,855		0.7%		0.7%			
Professional Fees		£1,855		0.7%		0.5%			
Bank Charges		£530		0.2%		0.2%			
Equipment Hire etc		£2,120		0.8%		1.5%			
Depreciation/Interest Charges		£3,180		1.2%		1.1%			
Miscellaneous Costs		£1,060		0.4%		0.2%			
Total Operating Costs		£85,065		34.1%		35.3%			
Divisible Balance (DV)	(A)	£57,035							
Rental Bid	(B)	£28,518		10.8%		50.0%			
Post Rent Balance	C = A - B	£28,518							
Net Tied Machine Income (2)	(D)	£3,750							
Total Net Post Rent Balance	(E) = C + D	£32,268							
(1) Income from Gaming Machines and other entertainments as specified to be included in the Shadow P&L net of associated costs to be shown here. Associated costs to include machine rentals; gaming duties and any other charges									
(2) Net Income from Tied Gaming Machines to be shown here below the Divisible Balance and to be net of associated costs including machine rentals; gaming duties; administration fees; management charges. Net Tied Income does not form part of the Rent Assessment									
(3) When compiling Shadow P&L, the relevant industry cost Benchmarking survey used should be referenced									

## Notes on cost assumptions

Wages, salaries and other staff costs	This will include staff working in the bar, kitchen, door staff, accommodation and management time where appropriate as well as training, holiday cover, uniforms and contract staff cost. If significant income is derived from food or accommodation, or the outlet is large enough to require dedicated management, this may be shown and accounted for separately. In all other cases, adequate provision for cover should be reflected in staff wages.
Rates	Rates will be the rates payable or if not available the estimated rates based on the Fair Maintainable Trade.
Utilities	This will include gas, electricity, other energy sources and water and sewerage charges.
Premises repairs & maintenance	Building, fabric, internal, external and garden repairs and redecoration.
Equipment repairs & maintenance	Includes bar, kitchen, cellar and security equipment and furniture repairs and renewals.
Insurance - buildings	Insurance cover is usually provided by the landlord but will be a cost if re-charged to the tenant
Marketing & promotion costs	Provision for entertainment - this may include Sky, background or live music, karaoke or jukebox and similar costs. Also includes the cost of social media, website, direct advertising, teams quizzes and prizes, in-house promotion and food and drink marketing and offers and other similar costs.
Telephone	Telephone and internet access costs.
Consumables	Includes catering equipment, tableware, electrical, glassware, barware and optics.
Waste, cleaning & hygiene	Waste collection, cleaning materials and specialist contract cleaning but not cleaning staff.
Professional fees	Costs of on-going professional advice and public & employers liability insurance.
Bank charges	Banking and credit card charges
Equipment hire etc.	Rental costs eg. coffee machines and including plant
Miscellaneous costs	Include licence fees and compliance costs (eg. gas certificates etc.) and sundry items.

## Annex B

### RENT ASSESSMENT STATEMENT FOR LEASED AGREEMENTS

A Rent Assessment Statement must be provided by the company to all prospective lessees before reaching a substantial agreement and prior to rent negotiations and renewals, in accordance with the provisions contained in clauses 143-163 of the Industry Framework Code of Practice.

The information to be included in the Rent Assessment Statement is detailed in clauses 143-158 of the Code. These are to be regarded as the minimum level of detail that must be included but companies are free to provide further information if they so wish and may also choose a different format in which to present that information. Companies should ensure that the presentation of the information is clear and set out in their code of practice, since the accreditation process will include an evaluation of the form and content of the Rent Assessment Statement.

The Rent Assessment must include:

- the company's assessment of the trade, indicating the margins used in the assessment of such trade;
- the past three years trading or volumes purchased direct from the company over the past three years where available, (if this information is not available then the Company will explain why);
- full details of all income streams broken down by type; the assumptions made as to operating costs by way of comparison
- there will be a minimum number of operating costs provided and the assumptions made will be explained

All required information should also be expressed as a percentage relative to turnover and comparable benchmarks referenced where appropriate.

Figures used should be net of tax (VAT and MGD).

For the avoidance of doubt Rent Assessment Statements must include the following:

- Barrelage figures for the previous three years (if known). If the figures are not available the reason for their omission should be given.
- Projected sales figures must include separate figures for draught ales, lagers and ciders and packaged sales of beer, cider and FABs. Sales figures must also include separate figures for wines, spirits and soft drinks.
- The cost figures for wet products as above must as a minimum include a cost line for draught ales, lager and cider which may include packaged alcoholic

drinks and a margin provided against the total product range. Companies may choose to provide more detailed cost information and gross margin against different product lines but this is not a requirement since the estimation of gross profit can be determined from the gross margin provided.

- Gross profit margins for wines, spirits and soft drinks should be shown separately.
- There is a loss of product associated with draught beers and ciders and most companies will include that within the gross margin estimate. The rent assessment does however provides for the inclusion of a 'waste figure' which must be included where it is not included in the gross profit margin and where to exclude such a figure would overstate the gross profit available.
- *NB. Most companies do however include waste within the margin and will not therefore provide a figure.*
- Where machines are not included within the terms of the lease the estimated income to be derived from them must be shown, net of direct costs, as shown in the example Rent Assessment contained in this Annex. Where the machines are tied the net income must be shown below the Post Rent Balance.
- Where the company deems it appropriate a place has been provided to include an estimate of the cost of a manager. The indication of such a cost will be provided where an operator should be advised of how such a cost will materially affect the earning potential of the lessee i.e. where the lessee is not intending to provide the labour and expertise to take on the day-to-day operation of the business.

The rent assessment must include an estimate of the costs incurred in running the business. **The company will make the lessee aware of any relevant cost benchmarking figures used to prepare the rent assessment and where these can be found.** The estimated costs will therefore not necessarily be those that are shown in the benchmarked costs but will be those that the pub owning company believes best reflects the pub in question. **Lessees are advised to make their own assessment of costs.**

RENT ASSESSMENT: ASSIGNABLE LEASE AGREEMENTS							
			% Turnover	Prior Three Years Beer Volumes			
Sales				Barrelage	Year 1	Year 2	Year 3
				Date			
Draught Lager		£172,000	22.9%	Year commencing..			
Draught Ale		£100,000	13.3%				
Draught Cider		£28,000	3.7%				
Draught		£300,000	40.0%				
Packaged Beer		£15,000	2.0%				
Packaged Cider		£13,000	1.7%				
Packaged FABs		£2,000	0.3%				
Packaged		£30,000	4.0%				
Wines		£50,000	6.7%				
Spirits		£20,000	2.7%				
Soft Drinks		£20,000	2.7%	No. Barrels Beer	470	520	485
Total Drinks Sales		£420,000	56.0%				
Food		£320,000	42.7%				
Accommodation		£0	0				
Other		£10,000	1.3%				
Net Machine Income (Free of Tie Only)							
Total Sales (Turnover)		£750,000	100.0%				
Wet GP%			51.4%				
Dry GP%			56.3%				
Wet		£215,880					
Wastage/Bottled Gas -if not accounted for in the margin)							
Dry		£180,160					
Net Free of Tie Machine Income (1)							
Gross Profit		£406,040					
			<b>Costs as %</b>	<b>Benchmarking</b>			
			<b>of Turnover</b>	<b>Costs %</b>			
Wages, Salaries & Other Staff Costs		£150,000	20.0%	22.0%	<b>RENT ASSESSMENT CERTIFICATION</b> Valuer's Commentary on Assumptions  <i>(Information utilised and assumptions made may be explained in this section, referencing where appropriate any comparative industry data used, previous trading history, source of benchmarks etc. Relevant valuation experience of the valuer may also be included. )</i>		
Rates		£28,500	3.8%	3.3%			
Utilities		£30,000	4.0%	4.1%			
Premises Repairs & Maintenance		£4,500	0.6%	0.7%			
Equipment Repairs & Maintenance		£6,000	0.8%	0.6%			
Building Insurance		£5,250	0.7%	0.7%			
Cost of Entertainment	£8,750						
Other Marketing/Promotion	£7,000						
<b>Total Marketing &amp; Promotion Costs</b>		£15,750	2.1%	2.1%			
Telephone		£2,250	0.3%	0.3%			
Consumables		£6,750	0.9%	0.9%			
Waste/Cleaning/Hygiene		£5,250	0.7%	0.7%			
Professional Fees		£7,500	1.0%	1.0%			
Bank Charges		£6,000	0.8%	0.8%			
Equipment Hire etc		£4,500	0.6%	0.6%			
Depreciation/Interest Charges		£9,000	1.2%	1.0%			
Trade Insurance	£1,200						
Regulatory Compliance Costs	£1,500						
Licensing & Responsibility	£1,500						
<b>Total Miscellaneous Costs</b>		£4,200	0.6%	0.6%			
Total Operating Costs		£285,450	40.0%	38.1%			
Divisible Balance (DV)	(A)	£120,590					
Rental Bid	(B)	£60,295	8.0%	50.0%			
Post Rent Balance	C = A - B	£60,295					
Net Tied Machine Income (2)	(D)	£3,750					
Total Net Post Rent Balance	(E) = C + D	£64,045					
Manager's Salary	(F)	£25,000					
(1) Income from Gaming Machines and other entertainments (Not Tied) as specified to be included in the Shadow P&L net of associated costs to be shown here. Associated costs to include machine rentals; gaming duties and any other charges							
(2) Net Income from Tied Gaming Machines to be shown here below the Divisible Balance and to be net of associated costs including machine rentals; gaming duties; administration fees; management charges. Net Tied Income does not form part of the Rent Assessment							
(3) Managers salaries may be included here but do not form part of the Rent Assessment							
(4) When compiling Shadow P&L, the relevant industry cost Benchmarking survey used should be referenced							



## Notes on Cost Assumptions

Wages, Salaries and other staff costs	This will include staff working in the bar, kitchen, door staff, accommodation and management time where appropriate as well as training, holiday cover, uniforms and contract staff cost. If significant income is derived from food or accommodation, or the outlet is large enough to require dedicated management, this may be shown and accounted for separately. In all other cases, adequate provision for cover should be reflected in staff wages
Rates	Rates will be the rates payable or if not available the estimated rates based on the Fair Maintainable Trade
Utilities	This will include gas, electricity, other energy source and water and sewerage charges.
Premises repairs & maintenance	Building, fabric, internal, external and garden repairs and redecoration
Equipment repairs & maintenance	Includes bar, kitchen, cellar and security equipment and furniture repairs and renewals.
Insurance – buildings	Insurance cover required and usually provided by the landlord and re-charged to the lessee
Entertainment	Provision for entertainment - this may include Sky, background or live music, karaoke or jukebox and similar costs.
Marketing and promotion	Cost of social media, website, direct advertising, teams quizzes and prizes, in-house promotion and food and drink marketing and offers and other similar costs.
Telephone	Telephone and internet access costs.
Consumables	Includes catering equipment, tableware, electrical, glassware, barware and optics.
Waste, cleaning & hygiene	Waste collection, cleaning materials and specialist contract cleaning but not cleaning staff.
Professional fees	Costs of on-going professional advice including legal, surveyor, accountancy, specialist rental valuation, business advisor, professional membership subscriptions as appropriate.
Bank charges	Banking and credit card charges
Equipment hire etc.	Rental costs eg. coffee machines and including plant
Trade insurance	Public and employers liability, contents, loss of business, interruption of trade
Regulatory compliance costs	To include such charges as gas and electrical certification and servicing, fire/smoke alarms and emergency lighting, lift hoist and similar costs
Licensing & social responsibility	Premises licence and associated fees, late night levy, where membership of BID, Best Bar None, Pubwatch or other social responsibility scheme evidenced

## Annex C

### USE OF FLOW MONITORING EQUIPMENT

(Detail for inclusion in pub owning company protocol)

1. Details of data to be shared with tenant/lessee and frequency.
2. Calibration/allowances and parameters for review.
3. Evidence of buying-out, supported by the flow-monitoring equipment.
4. Procedures to be followed by the company in establishing with the tenant/lessee that a breach has occurred.
5. Examples of additional evidence to be used in support of flow-monitoring evidence, for example presence of 'foreign' containers; purchase records; surveillance; third party intelligence.
6. Penalties/sanctions to be applied in lieu of forfeiture of lease in the event that a breach is determined.
7. How any charges will be applied.
8. Authorization of FME personnel to be given access to the premises and circumstances in which such access may be denied.
9. Tampering with equipment.