

Six changes to expect with new code of conduct for fair tenancy

A NEW code of conduct for fairer lease negotiations between landlords and retail tenants in Singapore is headed for legislation, with the government to work towards it in the coming months. But in the meantime, major landlords and tenants have committed to adopting the new guidelines by June 1. Here are six key changes. **BY LYNETTE TAN**



Rent structure

Only single rental computation allowed, meaning no "either/or, whichever-is-higher" formula. For example, a structure that goes by a fixed rent per square foot or percentage of gross turnover, whichever is higher, is not allowed unless both tenant and landlord agree and declare to the Fair Tenancy Industry Committee (FTIC) within 14 days of signing the lease.



Early termination of leases

TENANTS:

- Can now exit leases early if the retailer's business principal is insolvent, or if the retailer loses distributorship or franchise rights through no fault of the retailer.
- Must give at least six months' notice or pay six months' gross rent to the landlord.
- Must also compensate the landlord with a sum equivalent to the security deposit, and reinstate the premises



LANDLORDS:

- Can only terminate leases early for substantial redevelopment, asset enhancement or reconfiguration works that would require the premises to be vacated.
- A tenant's failure to meet specific sales targets will not qualify as a reason.
- Must give at least six months' notice to the tenant, and compensate the tenant based on how much was spent to fit out and upgrade the premises.

Exclusivity clauses

Provisions, such as those preventing or restricting a tenant from opening a branch or franchise within a certain radius of the current shop, are not allowed unless both the landlord and the tenant agree and declare to the FTIC within 14 days of signing the lease.



Sales audits

Landlords can only require tenants to conduct annual sales audits if the rent structure comprises a component based on the tenant's gross sales or gross turnover.

If the tenant's point-of-sales system (POS) is integrated to the landlord's:

- Landlord and tenant to split costs of such sales audits 50:50, or;
- Tenant submits monthly sales information, with monthly undertaking by the tenant's director or a certified public accountant on the accuracy of the information, as well as an annual statutory declaration by the tenant's director.



If not:

- Tenant to comply with the landlord's requirements for sales verification.
- If the landlord requires annual sales audits, the tenant must bear full costs.

Public liability insurance

The landlord can only require the tenant to have a coverage limit of up to S\$3 million, or match the landlord's coverage limit, whichever is lower. This does not apply to retail premises with a floor area of more than 15,000 square feet.



Electricity charges

If the landlord buys electricity for the entire premises:

- It must charge tenants the same rate it pays to the electricity retailer;
- It can charge tenants administrative costs, but must tell tenants upfront;
- It cannot charge tenants for any infrastructure costs it incurred in doing so.



If not:

- Tenants can choose their own open electricity market retailers as long as the existing physical infrastructure of the building can support it.