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我們矢志努力不懈，提供盡善盡美的土地行政服務。
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TO: Legislative Council Building
8 Jackson Rd, Central
Hong Kong

(Attn.: Ms Miranda HON –
Clerk, Public Accounts Committee)

19 December 2006

Dear Ms HON,

**The Director of Audit's Report on the
Result of Value for Money Audits (Report No. 47)**

With reference to your letter of 12.12.2006, the additional information sought by the Public Accounts Committee (PAC) is provided below in the same order of listing in your letter:

For item (a), Appendix A in my letter of 11 December was a summary of Government's legal position as regards proceedings affecting STTs in general. I consider that it would not be appropriate to disclose the legal advice on specific cases, to ensure the Government's legal position is not prejudiced, in particular in those cases which are the subject of on-going litigation between the Government and the STT tenants. For cases in respect of which legal action has been completed, I am advised that the advice obtained in those proceedings are relevant in determining similar disputes that may arise in future tenancies.

For item (b), (i) using Case 1-2 in Table 1 in the Audit Report as an example, Government does take legal processings against tenants to recover the outstanding rent, mesne profits and site possession as well as interim payment and court order requesting the bank to transfer the tenant's bank balance to Government. Please refer to Annex A for further information in this regard.

(ii) As to the application for summary judgment, there are a number of reasons why it might not be helpful. Firstly, an application for summary judgment would prolong the legal processings by putting the pre-trial process (exchange of facts and information between the parties) on hold pending the resolution of the application. If the application was unsuccessful it may have the double effect of delaying the ultimate recovery of the premises and of Government

being ordered to pay costs. Secondly, the plaintiff / tenant would only have to demonstrate to the court that he had an arguable defence, which could happen in cases where the plaintiff / tenant's claim appeared to be plausible, as referred to in the second paragraph of Appendix A to my previous letter. In summary, an application for summary judgment in a counterclaim should not be resorted to except in a clear case and, unless the tenant's claim could be shown beyond dispute to be unsustainable, the Government, as defendant, may not be able to prove that there was no defence to the counterclaim.

For item (c), if a tenant decides to take proceedings for any purpose including the avoidance of rent payment, Government would invariably respond to the proceedings and Case 1-2 is again an example.

For item (d)(i), the inspections on 28.9.2005 and 1.8.2006 were conducted with prior notification given to the tenant. It was necessary to notify the tenant to ensure that LandsD's staff could enter the STT premises to facilitate inspection of the interior and avoid futile visits to the remote site. Regarding the inspection made on 22.10.2002, there was no file record on whether prior notification had been given to the tenant.

For item (d)(ii), it is LandsD's normal practice, where buildings are allowed to be erected on site under a STT, to notify the tenant before an inspection is conducted to ensure that staff could gain entry into the buildings to conduct internal inspection whilst respecting the tenant's right of peaceful enjoyment of the premise during the tenancy term. Considering the Government's role as a private landlord in the administration of STTs, this practice is consistent with the contractual rights and obligations of the landlord in private tenancy agreements.

For item (e)(i) and (ii), please note that based on photos taken the internal situation of the premises on 4 December 2002 was different from that on 22 October 2002. The tenant's belongings were stacked up or covered up during the inspection on 4 December 2002.

For item (f), the officers concerned had compared the situation of the premises with reference to the photo taken on 22 October 2002.

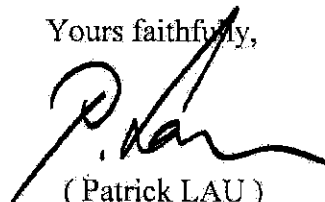
For item (g)(i), documents are attached at Annex B. For item (g)(ii), the tenant requested District Lands Officer/Shia Tin to consider regularizing the domestic use of the premises during a meeting on 22.12.1999 and such request was rejected on 1.2.2000. During the period between 22.12.1999 and 1.2.2000, the premises was perceived to be used for residential purpose.

For item (h), there is no specific guideline on the circumstances under which an STT site is to be regarded as being used for residential purposes or for storage purposes. Such determination would depend on the facts of each case. In the light of our experience with Case 5-4 in the Audit Report, LandsD has added a new provision to LAO Instruction that in case during inspection some extensive fixtures or equipment are found, which are obviously not in compliance with the terms of the tenancy, the tenant should be requested to remove the fixtures and equipment. An extract from the LAO Instruction is attached at Annex C.

For item (i), all the photos from 17.11.1983 to 1.8.2006 are attached at Annex D.

Please be advised that written statement from Mr. K F CHAN, one of the former District Lands Officer/Shu Tin, is at Annex E, while response from Mr. K L LEUNG has not yet been received as at the date of this letter. We have reminded Mr LEUNG of your request for a written statement.

Yours faithfully,



(Patrick LAU)
Director of Lands

Encl.

c.c. Director of Audit (Fax – 2583 9063) - w/o encl.

Secretary for Financial Services and the Treasury (Fax – 2147 5770)

(Attn.: Martin Glass) - w/o encl.

AA/SHPL - w/encl.

PSPL - w/encl.

**Note by Clerk, PAC: Annexes B and D not attached. See Appendix 10 for Annex E.*

**Course of Actions taken to Recover Outstanding Rent, Mesne Profit and Interest
owed by Company A in respect of 3 Short Term Tenancies of Case 1-2**

Date	Events
10/2003	Company A stopped paying rents for the above STTs since 10.2003 and DLO issued 1 st reminder D/Ns
11/2003	DLO issued 1 st warning letters with 2 nd reminder D/Ns demanding payment of outstanding rent & interest
11/2003	DLO issued "Notice of Intended Re-Entry" to demand outstanding rent, otherwise, the tenancies of these 3 STTs would be terminated in 12.2003
11/2003	Company A filed a writ of Summons against Lands D
12/2003	Tenancies terminated but Company A did not return the sites
12/2003	LandsD wrote to D of J suggesting to apply interim payment order for the 3 STTs
1/2004	DLO after seeking legal advice considered that it was not necessary to issue further D/Ns for these 3 STTs as legal proceedings had been taken against the tenant to recover the outstanding rents, mesne profits (i.e. rent for occupation during the proceeding period) and possession of the land
1/2004	D of J filed Counterclaims demanding Company A to settle the outstanding rents, interest, mesne profit and site possession
3/2004	LandsD requested D of J to make an application to court for interim payment against Company A
8/2004	D of J filed a Summons to Court for interim payment
2/2005	Interim Payment Application was heard on Court
4/2005	Court ruled Company A should pay interim payment for rent arrears, mesne profits and interest of the 3 STTs
5/2005	Company A appealed against the Court decision and refused to settle the interim payment
7/2005	D of J filed application for Garnishee Order to request the Garnishee of Company A (i.e. a Bank) to transfer Company A's savings therein to Government
8/2005	Court made a Garnishee Order Absolute
8/2005	Government received a sum of over \$2.2 million from the Bank
9/2005	D of J filed petition to winding up Company A
10/2005	Provisional Liquidator was appointed

13.5 Fixtures not compatible with the user

In case some extensive fixtures or equipment are found, which are obviously not in compliance with the terms of the tenancy, the tenant should be requested to remove the facilities in accordance with the enforcement timetable in para. A13.1 above.