Item 1

To respond in writing to the submissions from deputations which had already been forwarded to the Administration.

Please refer to the annexes attached for the responses of the Administration to the submissions from the concerned groups.

Annex A: Response to the submission from the Hong Kong Bar Association

Annex B: Response to the submission from the Law Society of Hong Kong

Annex C: Response to the submission from the Hong Kong Owners' Club

Annex D: Response to the submission from the Property Agencies Association

Annex E: Response to the submission from the Estate Agents Authority

Item 2

To seriously re-consider the possibility of imposing a criminal liability on tenants who deliberately provided false information to landlords.

(a) As suggested in the previous replies, the Administration considers that the provision of section 16A (Fraud) of the Theft Ordinance is itself sufficient to capture tenants who deliberately provide false information to landlords.

(b) Some landlords have expressed concerns about police action in response to allegations of fraudulent acts of tenants. The Administration is liaising with the police on this matter.

Item 3

To consider further streamlining the repossession process.

The existing repossession process has been established to ensure justice and fairness for all parties in the legal process. The Government's Working Group had consulted the Judiciary Administrator and reviewed the process thoroughly. Improvements where appropriate have been incorporated in the Bill 2001.

Item 4

To consider providing standard provisions for tenancy agreement for reference of relevant parties.

The requirements of the landlord and tenant may vary according to the circumstances of each case, including the type of property involved and the length of the lease. It is not possible to provide a tenancy agreement with standard terms that will be applicable to all tenancies. Further, any standard agreement proclaimed by the Government would be viewed as semi-statutory in nature, and would be misleading to the general public. In the last meeting on 19 April 2002, the Estate Agents Authority (EAA) agreed to consider the possibility of providing standard guidelines for tenancy agreements to be used by agents. The Administration welcomes EAA's agreement.

Item 5

To consider providing a fast track possession route to landlords who failed to recover rental after taking distress proceedings.

Distress proceedings and tenancy renewal procedures are two separate legal processes. Landlords should take into consideration of circumstances in deciding whether to commence a distress application. The Administration does not agree to establish a separate route of special treatment to repossess the premises in favour of landlords who fail to recover rent arrears in distress proceedings.

Item 6

To consider imposing a period within which tenants should remove their properties upon repossession of premises by landlords. For unclaimed properties, consideration should be given to storing these properties in public warehouse.

In respect of the difficulties of disposing of properties left in the premises by the tenant after repossession of premises, it is proposed in paragraph 2(b) of Clause 39 of the Bill that the Lands Tribunal should be empowered to make orders with regard to disposal of the properties. This would provide the Court with discretion to deal with cases of different circumstances, and to make appropriate order for disposal of the unclaimed properties where it thinks fit. A strict time limit for removal of properties or a requirement to store unclaimed properties in public warehouse may not be appropriate for all situations.

Reply to the submission from the Hong Kong Bar Association

1. Reduction in minimum period for automatic relief

The Association proposes to leave the relief period entirely to the discretion of the Court, and that no minimum relief period should be provided in the statute.

If the mandatory relief period is made discretionary, the repossession proceedings will inevitably be prolonged as the court has to spend more time to hear submissions from the landlord and the tenant before deciding whether the relief period should be granted. Also, it will be difficult to maintain consistency on the duration of the relief period as different judges will adopt different standards. The minimum relief period of seven days could provide certainty to the parties to a certain extent.

2. Implied power of forfeiture for non-payment of rent

Para. 2.4

The Association queries whether the proposed s117(3) of the Landlord and Tenant (Consolidation) (Amendment) Bill providing a "condition of forfeiture" would terminate a tenancy agreement automatically fifteen days after the rent has fallen due.

Under the proposed s117(3) of the Bill, a landlord may forfeit the lease if rent is not paid within fifteen days after the due date. In order to repossess the premises, the landlord needs to apply to the Court for repossession. When granting an Order of Possession, the Court would provide a relief period of seven days (as proposed in the Bill) if the tenant has opposed to the application. The tenancy will be reinstated if the tenant settles the rent in arrears and the costs ordered by the court within the relief period.

Para. 2.7

The Association suggests that a landlord who is faced with persistent or grievous failure of the tenant to pay rent may treat the tenant as being in repudiation and accept that repudiation thus "rescinding" their agreement, and therefore the need for the proposed s117(3) of Cap.7 is debatable.

The proposed s117(3) is intended to introduce an implied forfeiture clause into Part IV to enable landlords to apply for possession in case the tenancy agreement contains no express provisions enabling the landlord

to forfeit the tenancy where the tenant fails to pay rent.

Though a grievous failure to pay rent, may depending on the fact of each case amount to repudiation of the agreement, whether the failure to pay rent is grievous could be subject to dispute. Further, the proposed s117(3) is not limited to cases concerning grievous failure to pay rent and therefore is wider in scope.

The Administration would therefore maintain the proposal to introduce an implied forfeiture clause for non-payment of rent, in order to provide a certain avenue for landlords to forfeit the tenancy where the tenant fails to pay rent fifteen days after the rent falls due.

3. Reform of termination and renewal procedure

Para. 3.5

The Association suggests that with the discretion to be granted to Court to hear cases outside specified time limits under the proposed s119D, expiry of notice of termination (Form CR101) is no longer a deadline for application of tenancy renewal. As a result, a tenant might be able to abuse the procedures and ask the Court to entertain his late application by saying that he has overlooked and misunderstood the need to apply for renewal.

The Administration believes that it is unlikely for the discretion to entertain late applications for renewal of tenancy to be abused as the Court could only entertain late applications with good cause.

Form CR105

The Association suggests that Form CR105 should be maintained to facilitate the renewal procedure by giving tenants a deadline for application to the Court.

Currently, Form CR105 (notice by landlord requiring tenant to make application to Lands Tribunal for new tenancy) might be opted to be served to tenants after two months of serving Form CR101. Tenants who want to renew the tenancy must apply to the Lands Tribunal within two months from the date of service of the Form CR105 or before the

date of termination stated in Form CR101, whichever is earlier.

The Administration is aware that the existence of Form CR105 has been creating confusions at times and tenants have complained that they have missed the deadline to apply for tenancy renewal out of misunderstanding.

Furthermore, with the shortening of the lead time from 6-7 months to 3-4 months under the proposed s119, the service of Form CR105 may serve little purpose. This is because the deadline to be improved may only be slightly earlier than the termination date in the Form CR101.

Under the shortened lead time, there would not be much room for the tenant to procrastinate application to the Court for the granting of a new lease.

4. Grounds of opposition

Para. 4.1

The Association suggests that with the proposed s119E(1) to allow a landlord to change or add grounds of opposition in response to the request of the tenant to renew the tenancy, the landlord might deliberately mis-state his grounds of opposition on the form and then use different grounds before the Court.

The Administration agrees that the scenario as stated may arise. Should the Court make a finding that the landlord has mis-stated his ground of opposition, his defence should fail.

Para. 4.2

The Association considers that the proposed s119E(1) is unfair as it would allow a new landlord to change the ground of opposition and ask for self-occupation shortly after becoming owner.

The situation mentioned would be most unlikely to arise as a landlord is prevented by s119E(2) to oppose on the ground of self-occupation if he has become owner for less than twelve months before termination of the tenancy.

5. Penalties for harassment

Para. 5.2

The Association proposes that developers in redevelopment cases should be made strictly liable for any harassing acts done to tenants to force them to move out of the premises, no matter who actually carries out the harassing acts to the tenants and whether the developer has knowledge of the acts.

The Administration notes the concern of the Association about the difficulty in linking the developer with the actual offender in cases of harassment done to tenants. However, the Administration could see no ground to impose criminal liability on an innocent developer who has no knowledge of the harassing acts done on tenants by other people, in such situation as suggested by the Association in para. 5.1. Sanctions and punishments provided under the proposed s119V apply to all persons, and if a developer, with requisite knowledge or belief of the likely results on the tenants, has instructed other people to harass the tenant with unlawful acts that fall under s119V, he would be liable.

6. Small tenements recovery

Para. 6.1 and 6.3

The Association views Part VI as an outdated and unfair procedure that should not be revitalised, and queries whether the rateable value of premises caught by Part VI (concerning small tenements recovery) should be proposed to increase from $30 000 to $100 000.

The Administration perceives that Part VI is a streamlined procedure for repossession of premises with small tenements which are prone to illegal occupation or desertion. When the present level of the rateable level of $30 000 was set in 1986, it was intended to cover most of the domestic premises sized below seventy-five square meters. The proposed level of $100 000 is only aimed to bring the level up to date, instead of enlarging the jurisdiction of Part VI.

Para. 6.2

The Association considers Part VI procedure as “ex-parte” and unfair.

According to the Judiciary Administrator, it is incorrect to suggest that Part VI procedure is “ex-parte” as s130 of the LTO requires originating summons issued in pursuance of a Part VI action must be served to the defendant (tenant), and the defendant (tenant) would be heard in Court.

7. Time for making distress

The Association queries whether the time for making distress under Part III of the LTO should be changed from "sunrise to sunset" to "9am to 5pm", as it would be in fact easier to carry out the distress in the former hours than the latter.

The restriction on the time for a bailiff to execute a Warrant of Distress after sunrise and before sunset had been adopted since 1911. It was intended to minimise disturbance caused to distrainees.

The proposed change of timing from "after sunrise and before sunset" to "9am to 5pm" aims to bring it in line with the modern practice of normal office hours as, according to the Judiciary Administrator, the hours of sunrise and sunset vary from day to day in terms of minutes.

8. Powers to amend fees and forms

The Association considers that the power for the Chief Executive in Council (and proposed to be transferred to the Secretary for Housing in the Bill) to amend Schedule IV (fees) and V (forms of affidavit) under s114 of the LTO is rather judicial and should not be delegated to the Administration.

The Administration will consult Judiciary Administrator to determine whether it would be more beneficial to revert the concerned power to the District Court Registrar.

9. Extension of Part V protection

The Association suggests that Part V should be abolished.

As the proposal is outside the scope of the Landlord and Tenant (Consolidation) (Amendment) Bill 2001, the Administration will further explore the feasibility and desirability of the proposal outside the context of the Amendment Bill in question.

10. Illegal use and illegal structures

Para. 10.2a

The Association suggests that the use of premises for an illegal or immoral purpose is not a ground for the landlord to oppose the grant of a new tenancy.

The Administration would like to clarify that under section 119E(1)(e) of the LTO, immoral and illegal use of a premises by the tenant is a ground for the landlord to oppose renewal of tenancy.

Para. 10.2a

The Association considers it undesirable to introduce an implied forfeiture clause on construction of unauthorized structures.

As pointed out in the Administration's response to Item 2 of matters arising from the meeting of the Bills Committee on 6 March 2002, the Administration considers there are practical difficulties and additional costs incurred to landlords and tenants in making the erection of Unauthorised Building Works (UBWs) an implied forfeiture clause, i.e. it might become necessary for scrupulous landlords and tenants to prove no erection of UBWs before and after letting and renting. To do so, landlords and tenants would have to consult Authorized Persons or to view the approved building plans themselves to determine whether the premises is UBWs-free. This would be too onerous a burden and would

create additional costs to landlords and tenants. As such, the Administration alternatively proposes another implied forfeiture clause on any alteration or addition made to the premises without prior consent of the landlord.

11. Persistent failure to pay rent

The Association considers that a landlord can always protect himself from late payment by taking a deposit and putting relevant clauses in the tenancy agreement for forfeiture upon persistent late payment of rent.

The introduction of an implied forfeiture clause on persistent late payment of rent is aimed to assist landlords who fail to put in the tenancy agreement a forfeiture clause in respect of persistent delay in payment. The Administration agrees with members of the Bills Committee that such protection is needed.

Reply to the submission from the Law Society of Hong Kong

Thorough review of the Ordinance

The Law Society proposes that a thorough review should be considered to assess the continued need for tenure protection.

Tenure protection is one of the fundamental provision to the current tenancy practice. Such a review will be outside the scope of the Landlord and Tenant (Consolidation) (Amendment) Bill 2001. The Administration will further explore the feasibility and desirability of the proposal outside the context of the Amendment Bill in question.

The Bill 2001

Clauses 12 and 13

The Law Society proposes to reduce the lead time for the landlord to serve a notice of termination of tenancy on the tenants to "not more than 3 nor less than 2 months".

The Administration proposes to set the lead time at three to four months because firstly, the feedback received by the Administration over the years has indicated that the existing lead time is too long, and secondly, flexibility is favoured to accommodate the changing circumstances nearer the end of the tenancy. The Administration does not agree to further shorten the lead time because it would run the risk of not allowing

enough time for the landlords and tenants to negotiate before starting the case in the Tribunal.

Clause 16(c)

The Law Society objects to granting discretion to the Court to entertain applications not adhering to the statutory time limits.

At present, landlords and tenants have to strictly observe the various time limits in the tenancy renewal procedures. This has been causing inconvenience and the Lands Tribunal has criticised that at times it is prevented from determining cases solely on their merits and has to strike out some applications due to such kind of technical flaw. Providing the Lands Tribunal with power to invoke discretion to hear cases of good cause despite the time limits have not been complied with will overcome this drawback.

Clause 17

The Law Society proposes that amendments should be made to state clearly that failure to state a ground of opposition would not invalidate Form CR 101, in order to be consistent with the proposal to allow landlords to add grounds in opposing granting of new tenancy by the Tribunal.

The amendment to s119E(1) to allow landlords to add or change the grounds of opposition is intended to provide flexibility in the tenancy renewal mechanism so that any changing circumstances after an application has been lodged can be taken into consideration. The Administration is of the view that the requirement to specify the ground

on Form CR101 is not in conflict with the amended s119E(1). The requirement should be maintained as it will serve to ensure that the landlord is, from the outset, relying on grounds that are permitted under s119E(1) in opposing renewal of the tenancy. On the other hand, if such requirement is removed, the tenant would not know the ground of opposition of the landlord beforehand and thus would be deprived of the opportunity to prepare for his case.

Clause 27

The Law Society proposes to tighten up Clause 27 (concerning harassment to tenants) to avoid catching innocent parties.

The Administration is of the view that it would be very unlikely for innocent parties to be caught by Clause 27 as every case would be thoroughly investigated. Further, prosecution will only be brought for justifiable cases where the unlawful acts are committed with the requisite knowledge or belief of the likely results on the tenants.

Distraint

The Law Society proposes to simplify the distress procedures.

Advice is being sought from the Judiciary Administrator whether the current procedures could be further streamlined.

Reply to the submission from the Hong Kong Owners' Club

The nine case studies

1. The Administration notes the nine cases submitted by the Club illustrating the unfortunate encounters of landlords with rogue tenants.

2. The Administration would like to point out that the current court procedures are devised to ensure justice and fairness for all parties in the legal process though, unfortunately, are abused by a handful of unscrupulous persons in some cases. In formulating the amendments now proposed in the Bill, relevant procedures had been reviewed thoroughly by the Government's Working Group in conjunction with the Judiciary Administrator, and improvements where appropriate were incorporated into the Bill.

3. The Administration welcomes specific proposals to be suggested by the Bills Committee and interested groups, and would accommodate the suggestions as far as possible, with the objective of fairness and justice for all parties.

Penalty for harassment on tenants

4. The proposed penalties in the Bill are in response to the concern of the public over harassment acts on tenants and its request for heavier punishment for such offences throughout the years.

5. The Administration considers that the scale of penalty suggested by the Club i.e. a fine equivalent to a multiple of the rental, e.g. ranging from three-months to one-year rent, is not in proportion to the seriousness of the crime and thus insufficient to address the offence with proper weight.

Criminal liability to be imposed on rogue tenants

6. The Administration is liaising with the police on better enforcement of the legislative provisions (as suggested in Item 7 of the Administration's first reply to the Bills Committee), with which prosecution might be brought against rogue tenants, where appropriate.

Deposit in the Court for default on rent payment in repossession cases

7. The Club suggests that a tenant who has been sued for rent in arrears by a landlord should be required to deposit into the Court before the case is heard a certain sum of money which amounts to

approximately the sum of rent in arrears as claimed by the landlord. The landlord would be awarded what he is entitled to from the deposit if the Court judgment is in favour of him.

8. According to the Judiciary Administrator, there is no similar provision in the current court procedures and there is no legal basis for courts to make such order. The Administration will follow up the issue and explore further the feasibility and desirability of the proposal with the Judiciary Administrator.

Damage caused by rogue tenants to the rented premises

9. The Club suggests that the Government should issue directions to the police to deal with cases of criminal damage caused by rogue tenants to the rented premises.

10. The Administration is liaising with the police on this matter.

Services of the Bailiffs

11. The current fees charged for a distraint including both statutory and incidental items. Statutory fees include commission amounts to 10% of the total amount of the arrears of rent claimed and fixed costs for the filing of the affidavit and the distraint; incidental fees are the guard fees and travel expenses incurred incidental to each occasion of execution.

12. The Administration would explore with the Judiciary Administrator about the desirability and feasibility of the proposal of recruiting more bailiffs.

Disposal of unclaimed properties

13. It is proposed in paragraph 2(b) of Clause 39 of the Bill that the Lands Tribunal should be empowered to make orders with regard to disposal of the properties. This would provide the Court with discretion to deal with cases of different circumstances, and to make appropriate order for disposal of unclaimed properties where it thinks fit.

Seal of the Court on the notice

14. Currently there is no legal requirement that a notice of proceeding has to bear an official seal of the Court. The Judiciary Administrator does not support the proposal.

Service of the notice by the Court instead of the landlord

15. The Administration would further explore with the Judiciary Administrator about whether the proposal is feasible.

Reply to the submission from the Property Agencies Association

Paragraph 1

The Administration agrees that the procedures for possession of premises should be streamlined as far as possible. At the same time, necessary procedures should be put in place to ensure justice and fairness for all parties in the relevant legal proceedings. The current procedures have been thoroughly reviewed by the Government Working Group and have been streamlined to its best extent. Improvements where appropriate have been incorporated in the 2001 Bill.

For the time needed to set down a case for hearing, at the expiration of not less than three days after the receipt of the application to list for hearing, the Registrar of the Tribunal shall list the application for hearing and shall give notice to all parties for not less than fourteen clear days. The current waiting time of about twenty-one days is optimal, having taken into consideration of the balance of interest of all parties and the resources available. In majority of the cases, the order for possession is made on the day of the hearing.

Paragraph 2

The Administration notes the Association's support to strengthen the penalty provisions to sanction genuine unlawful acts to harass tenants. These provisions will be invoked only if the unlawful acts are calculated

to interfere with the enjoyment of the premises, or are persistently carried out, with the knowledge that the tenant will be deprived of the occupation of the premises as a result. The Administration considers that the provisions have adequately addressed the Association's concerns regarding unwise impulsive acts.

Paragraph 3

This option had previously been considered but was found not feasible as however well-designed, a standard agreement could not be applicable to all circumstances. Further, any standard agreement proclaimed by the Government would be viewed as semi-statutory in nature, and thus could become misleading to the general public. In the last meeting on 19 April 2002, the Estate Agents Authority (EAA) agreed to consider the possibility of providing standard guidelines for tenancy agreements to be used by agents. The Administration welcomes EAA's agreement.

Paragraph 4

The Bill only proposes to revise the calculation method of compensation plan for part-let premises. It is estimated that the revised compensation scheme would only lead to about 1% increase of the total redevelopment cost, and is therefore unlikely to discourage developers from undertaking redevelopment projects.

Annex E

Reply to the submission from the Estate Agents Authority

The Administration welcomes the comments from the Authority.

Para. 4

The possible abuse suggested by the Authority will be monitored closely.

Para. 10

The scale of fee levels will be introduced with due consultation with concerned parties and the Legislative Council.