Item 1

To advise the increase in number of claims for interest in respect of rent in arrears by landlords in proceedings for recovery of rent as a result of advice given by staff of the Rating and Valuation Department.

The Judiciary Administrator advises that no statistics on the number of claims of interest in rent in arrears cases is kept.

Item 2

To advise the compliance rate whereby repossession of premises can be completed within 103 days.

The Judiciary Administrator advises that the timeframe of 103 days for repossession cases can be broken down into two main stages: 73 days for the stage from the filing of application to the issuance of the Writ of Possession, and 30 days for the stage of execution. For the first stage, if the case is straight forward and both the landlord and tenant observe the time limits, the Tribunal should be able to attend the case within 73 days. For the second stage, 14% of the Writs of Possession could be executed within 30 days and 33% within 45 days. Recently, the Judiciary Administrator has streamlined its internal working process, and expects that 40% of the Writs could be executed within 30 days in the coming months.

Item 3

To provide the required manpower and financial resources to the Lands Tribunal with a view to expediting the repossession procedures.

The Judiciary Administrator advises that resources are tight, but they would continue to put its resources to optimal use and made necessary deployment where needed.

Item 4

To consider vesting Rating and Valuation Department with the power to deal with tenancy disputes not exceeding a prescribed amount of money as in the case of labour disputes by the Labour Department.

The Rating and Valuation Department has studied the adjudication and mediation services for employment disputes, and is liaising with the Labour Department for further details and advice. Following the preliminary investigation, RVD will consider in more details the feasibility of providing similar services for tenancy disputes.

Item 5

To ask the Judiciary Administrator to consider including in Form 22 (Notice of Application under the Landlord and Tenant (Consolidation) Ordinance (Cap.7) (LTO) applications for interest for rent in arrears and disposal of properties left in premises by tenants.

The Judiciary Administrator agrees to revise Form 22 . A revised Form 22 is being consulted with the Judiciary Administrator.

Item 6

To include an undertaking in the speech to be delivered by the Secretary for Housing, Planning and Lands at the resumption of Second Reading debate on the Bill that the provision of false information by tenants should be included in the context of the comprehensive review of the security of tenure provisions under LTO. The involvement of the sub-tenants in the legal proceedings at which the principal tenant was in default of rent payment should also be considered.

The issues of provision of false information by tenants, and the involvement of sub-tenants in the legal proceedings at which the principal tenant is in default of rent payment will be included in the comprehensive review of the security of tenure provisions under the LTO.

Item 7

To seek advice from the Judiciary Administrator on the bailiff resources and procedures in the event of repossession of premises and disposal/ valuation of left over properties. Consideration should be given to including in the Form 22 or Writ of Possession a claim for the disposal of properties left in premises.

(a) For the matter of Form 22, please refer to **Item 5**.

(b) The Judiciary Administrator agrees to include in the Writ of Possession a claim for disposal of left over properties.

Item 8

To ensure that tenants' and sub-tenants' compensation in the event of redevelopment of their premises will not be reduced as a result of the proposed change of the law.

(a) Members have expressed concern over whether the Tribunal under the proposed amendment to the method to calculate redevelopment compensation in the Bill, would award rebuilding compensation under section 119F to a principal tenant who does not retain any part of the premises.

(b) According to section 119F(4)(a) of the LTO, the Lands Tribunal currently awards rebuilding compensation in accordance with the rateable value of the leased properties as a whole, and then apportions the block compensation according to the portion retained by each occupant. Under the proposed amendment, the Court would first apportion the rateable value according to the portion each occupant retains, and then work out the amount of compensation payable to each occupant based on their apportioned rateable value. Under both the current and proposed circumstances, a principal tenant who does not retain any part of the premises is not entitled to compensation.

(c) All occupants in the leased premises would be better off in terms of redevelopment compensation under the new calculation scheme so long as they retain any part of the premises. This is because the rateable value an occupant being apportioned as proposed under the Bill would be lower than the rateable value of the leased premises as a whole. The lower apportioned rateable value would attract higher

multipliers in the compensation scale than the rateable value of the whole premises. As such, the compensation received by each occupant under the proposed amendment would be higher than that under the current arrangement.

Item 9

To inform the Bills Committee of the progress of the review o the Police internal guidelines on handling of disputes between landlords and tenants.

(a) The Police have reviewed the guidelines and are in the course of finalising the details.

(b) As advised by the Police, additional provisions are added to draw the attention of police officers to address the problem of unscrupulous behaviour of rogue tenants that attracts criminal liability. The Police further advise that they will examine each report made to them by members of the public, landlords or tenants. If it is reasonably believed that a criminal offence has been committed by either party, the investigation of the case would be taken up by a Crime Investigation Team. If no evidence of criminal liability is found, the case will be referred to the Commissioner of Rating and Valuation for mediation as appropriate.

Item 10

To arrange to notify the Housing Panel of the commencement of provisions of the Bill.

The Administration will inform the LegCo Panel on Housing on the commencement date of the Bill. The Administration proposes that Clause 18(b) concerning increased compensation to tenants upon opposition of renewal by the landlord on the ground of redevelopment should take immediate effect. The remainder of the Bill will take effect as soon as possible to allow time for:

(1) approval and gazetting of fees for new services offered by the Rating and Valuation Department;
(2) printing and gazetting of forms including distribution of new forms and pamphlets, and retrieval of old ones;
(3) preparation for new or revised work procedures; and
(4) advanced notice of changes to the public, Judiciary, and concerned legal and professional bodies.

Committee Stage Amendments (CSAs)

Item 11

To prepare a CSA to reflect the legislative intent of forbidding a tenant to claim for relief from forfeiture more than once per tenancy unless with good cause as determined by the Court.

Please refer to the draft CSA at **Annex A**, which adds section 21F(1A) of the High Court Ordinance and section 69(1A) of the District Court Ordinance to forbid a tenant from claiming relief from forfeiture more than once per tenancy unless with good cause as determined by the Court.

Item 12

To introduce CSA to proposed section 144 to the effect that the implied forfeiture clauses newly moved under Clause 11 of the Bill should be applicable only to new tenancy agreements signed after enactment of the Bill.

Please refer to the proposed section 117(3) of **Annex A**, which applies the implied forfeiture clauses under Clause 11 of the Bill only to new tenancy agreements signed after enactment of the Bill.

Item 13

To consider redrafting CSA for the proposed section 117(3)(d) with reference to the Buildings Ordinance (Cap. 123) regarding unauthorised alteration and to provide the revised draft of Clause 11 to the Clerk for onward submission to the Hong Kong Bar Association and the Law Society of Hong Kong for comments.

(a) The Administration has explored three options to imply a forfeiture clause for unauthorised building works into tenancy agreements by reference to , namely:

(i) contravention of the Buildings Ordinance (BO);
(ii) issue of section 24 order under the BO by the Building Authority; and
(iii) material alterations carried out by tenants on the leased premises.

(b) After having sought views from concerned departments, the Administration is of the view that the three options would entail a number of difficulties and hence not preferred.

(i) Contravention of the Buildings Ordinance

(c) The first option is to draft the proposed section 117(3)(d) to the effect that where a tenant causes buildings works to be carried out in contravention of any of the provisions of the Buildings Ordinance, it would constitute a condition for forfeiture. Under this option, landlords who are seriously affected by alteration works which contravene no

provision of the BO (but rather Fire Services Ordinance, Public Health and Municipal Services Ordinance, or the Deed of Mutual Covenants) will not benefit from the implied forfeiture clause.

(d) Additionally, the suggestion will carry substantial resource implications to the Buildings Authority as there will be a large number of inquiries from landlords and tenants as to whether or not building works are in contravention of the provisions of the BO. There may also likely demands from landlords for the issue of section 24 orders under the BO.

(e) In view of the above considerations, the Administration prefers not to pursue this suggestion.

(ii) <u>Issue of Section 24 order under the BO by the Building Authority</u>

(f) Consideration has also been given to tie the proposed section 117(3)(d) with issue of a section 24 order under the BO, so that the implied forfeiture clause can be triggered upon issue of a section 24 order.

(g) According to the current enforcement policy of the Building Authority, not all UBWs are subject to issue of section 24 orders. It follows that a premises free of section 24 order does not necessarily free from UBWs. If the issue of section 24 order is relied on, this would mean that those landlords who receive section 24 orders would be able to rely on the forfeiture clause, but those who do not would not be able to do so even though UBWs also exist on the latter's leased premises. On the other hand, there are situations where some alterations carried out by

tenants may cause damage to the leased premises but do not warrant the issue of section 24 order.

(h) Moreover, complications in the application for forfeiture will arise if a tenant lodges an appeal against a section 24 order. This will inevitably prolong the repossession procedures.

(i) In view of the above considerations, the Administration prefers not to pursue this suggestion.

(iii) Material Alterations carried out on the Leased Premises

(j) The Administration has also considered to amend the proposed section 117(3)(d) such that a tenancy can be forfeited if material alternations have been carried out by tenants on the leased premises. However, as advised by the Department of Justice, the expression of "material alteration" is difficult to be defined and is likely to give rise to endless arguments on whether an alteration is "material" or not. This would not be conducive to swift repossession and hence undesirable.

(k) In view of this, the Administration prefers not to pursue this suggestion.

(iv) Administration's Proposal

(l) The Government's policy is to minimise intervention in the private market and private contracts. In introducing implied forfeiture clauses, the intention of the Administration is to facilitate landlords to repossess premises let out on oral tenancy agreements, and would only

include those covenants of tenancy agreement that have been widely adopted and well accepted by landlords and tenants. The proposed section 117(3)(d) is reflecting the current practice in the rental market because, as observed by the Department of Justice, it is a common term in many Hong Kong tenancy agreements to forbid alterations carried out by the tenant without consent of the landlord.

(m) In view of the above consideration, the Administration is of the view that the current proposed section 117(3)(d) should be maintained.

Item 14

To introduce CSA to amend the hours of entry upon a warrant for possession of premises under section 131(a) to "between 9am and 7pm".

Please see the New Clause at **Annex A** for amendment on the hours of entry upon a warrant for possession of premises under section 131(a) to "between 9am and 7pm".

Item 15

To review the redrafting of the English and Chinese versions of the Bill to ensure consistency.

The updated draft of the CSAs has taken into consideration of the comments made by members in the last meeting on 31 July 2002. Amendments are made accordingly, except for the following:

(i) Members queried whether "及其他用地安排" in Clause 18(a)(i) of the Bill was a good rendition of "and other accommodation". After reading the existing section 119F(1)(a) of the LTO, in which "accommodation for domestic use" and "accommodation for other than domestic use" are rendered as "住宅用的用地安排" and "非住宅用的用地安排", the Law Draftsman is satisfied that the present rendition is correct and hence no change has been made in the updated draft.

(ii) For Clause 18(b)(ii)(A) of the Bill, the Law Draftsman is of the view that it is a correct rendition of the English text though the presentation is different (i.e. the Chinese text does not contain the parenthesis used in the English text). Hence, no amendment should be required.