Item 1

To report to the Panel on Housing the outcome of the study on the feasibility of vesting the Rating and Valuation Department with the power to deal with tenancy disputes not exceeding a prescribed amount of money.

(a) The Rating and Valuation Department has studied the operation of the Minor Employment Claims Adjudication Board of the Labour Department, and has raised to the Judiciary Administrator (JA) the proposal of authorising the Department to deal with rent recovery cases not exceeding a prescribed amount of money.

(b) The JA has preliminarily expressed reservation over the proposal. The Administration would liaise with it further on the issue.

Item 2

To include the distress procedures in the comprehensive review of the security of tenure provisions of the Landlord and Tenant (Consolidation) Ordinance (Cap.7).

(a) The Judiciary Administrator (JA) has advised that all the distress procedures currently in place are necessary.

(b) The Administration will liaise further with JA on the need for a review on the procedures.

Item 3

To provide the revised internal guidelines on the handling of tenancy disputes by the Police.

(a) The Police advise that to address the problems caused by rogue tenants in tenancy disputes, they have issued an interim guideline in dealing with disputes between landlords and tenants.

(b) In the interim guideline, front-line officers are reminded to note that although the Landlord and Tenant (Consolidation) Ordinance (LTO) (Cap.7) does not provide any specific offences to deal with rogue tenants, a tenant may still be liable for offences under other Ordinances, such as "theft" and "obtaining pecuniary advantages by deception" under the Theft Ordinance (Cap. 210), and "criminal intimidation" and "criminal damage" under the Crimes Ordinance (Cap. 200). In any situation, where there is evidence of a criminal offence, normal investigation procedures same as the handling of all other crimes should apply.

(c) The Police will further revise the internal guidelines on the handling of tenancy disputes after the passage of the Bill, in order to take into account of any further changes in the provisions of the Bill. Hence, the Police advise that no revised internal guidelines should be available before the passage of the Bill. Meanwhile, the Police will continue to monitor the situation of tenancy disputes, and are studying the trend of tenancy dispute cases in recent years and how such cases have been handled.

Item 4

To introduce Committee Stage amendment to revise the Notice of Application under the Landlord and Tenant (Consolidation) Ordinance (Form 22).

Enclosed please find the CSAs at **Annex A**.

Item 5

To review the drafting of proposed sections 117(3) of clause 11, 119F(2)(a), 119F(4)(d) and 119F(5)(ba) of clause 18 and section 69(3) of the District Court Ordinance (Cap.336) of the Schedule.

Enclosed please find the CSAs at **Annex A**.

Reply to the submission from the Hong Kong Bar Association

Paragraphs 1 - 3

(a) The introduction of forfeiture clauses into tenancy agreements is to give more protection to landlords who suffer from immoral or illegal use of the premises by the tenants, persistent delayed payment of rent and erection of unauthorised structures. The proposed covenants and forfeiture clauses are widely used and accepted. Their inclusion under Clause 11 of the Bill should pose no further difficulties to the parties.

Paragraph 4

(b) The Administration agrees that the implied covenants and forfeiture clauses are applicable to all tenancies instead of oral tenancies only.

(c) It is the intention of the Administration that where there is no covenant specifically provided in a tenancy agreement as in the proposed section 117(3), such covenant shall be implied into the tenancy agreement. Upon breach of the implied covenant, the proposed section 117(3) further provides the landlord with an implied condition for forfeiture to forfeit the tenancy.

(d) Where there is a covenant provided in the tenancy agreement which term is inconsistent with that provided under the proposed section 117(3), the covenant in the tenancy agreement shall prevail, and no covenant and in turn condition for forfeiture shall be implied into the

tenancy agreement.

Paragraphs 7 - 15

Definition of "material alteration or addition"

(e) Re paragraph 10 of the submission, the Administration and the Bills Committee are referring the term "material alteration or addition" to alteration or addition that are of sufficient gravity to justify complaint by the landlord.

(f) After seeking further legal advice, the Administration proposes that under proposed section 117(3)(d), a tenant should not do any material alteration or addition to the premises "without prior written consent of the landlord" (compared with the original proposed clause "without the consent of the landlord") in order to reduce the possible disputes over whether such consent is obtained. Please see at **Annex A** of the main reply for the revised proposed section 117(3)(d).

Drafting of CSAs

(g) Other technical amendments suggested in the submission are incorporated in the updated CSAs at **Annex A** of the main reply.

Housing Department
October 2002

Response to submission from the Law Society of Hong Kong

Thorough Review of the Ordinance

The Administration plans to conduct a comprehensive review of the security of tenure provisions under the LTO. The review includes Part IV of the Ordinance which provides security of tenure to most domestic tenancies in Hong Kong, and Part V of the Ordinance which requires a minimum notice period to be given by landlords of non-domestic premises in terminating a tenancy on the expiry of the tenancy term. The Administration will consult the Legislative Council Panel on Housing and relevant professional bodies on the result of the review.

Clause 11 of the Bill

(b) The proposed section 117(3)(c) aims to tackle the problem of persistent delayed payment of rent by some irresponsible tenants, who might take advantage of the mandatory relief period provided for forfeiture upon non-payment of rent cases and repeatedly procrastinate to pay rent until before the mandatory relief period expires. As such, the Administration has copied the wording "unnecessary annoyance, inconvenience or disturbance" from the now lapsed section 53(2)(d) of the LTO. Section 53(2)(d) allowed landlords to repossess the leased premises before the term of tenure expires upon unnecessary annoyance, inconvenience or disturbance caused by the tenant (including events such as persistent delay of rent payment as mentioned specifically in section 53(2A)).

(c) According to the Department of Justice, the scope of the wording of "unnecessary annoyance, inconvenience or disturbance" is wider than "nuisance". Whilst nuisance at common law would involve wrongful disturbance or interference with a person's use or enjoyment of land, "unnecessary annoyance, inconvenience or disturbance" could be hassles caused to the landlord such as persistent failure to pay rent when it is due.

(d) Hence, the current wording of "unnecessary annoyance, inconvenience or disturbance" is preferred to "nuisance".

Clauses 12 and 13

(e) The Administration considers the proposed lead time for tenancy renewal of "not more than 4 nor less than 3 months" is appropriate because while the current lead time of "not more than 7 nor less than 6 months" is proved too long on the one hand, both landlords and tenants should be allowed sufficient time to negotiate and go through the necessary procedures.

Clause 16(c)

(f) Clause 16(c) was proposed against the background that the Lands Tribunal had criticised that they were unable to determine cases solely on merits as some cases were deemed to be struck out due to some procedural irregularity. The Administration is of the view that this discretion granted to the court would not be abused as only those late applications with warranted grounds would be entertained.

Clause 17

(g) The purpose of Form CR101 is for a landlord to notify the tenant of his wish to terminate the tenancy upon the expiry of the current term. Under the security of tenure regime provided in Part IV of the LTO, it is legitimate for tenants to expect renewal of the tenancy upon expiry of the term, save for a number of grounds of opposition stipulated under section 119E raised by the landlord. While it is assumed that any such ground raised to terminate the tenancy should be genuine, the lack of a specific ground being mentioned in the Form CR101 would create uncertainty to both the Court and the tenant in preparing for the case. Hence, the Administration finds it necessary for the ground of opposition to be stated in Form CR101, and that failure to do so should invalidate the Form.

(h) It is a correct observation that a prior written warning is a pre-requisite for the landlord to object to renew the tenancy on the ground that the tenant has been causing "annoyance, inconvenience or disturbance". No matter whether such ground is required to be stated in the Form CR101, a prior written warning from the landlord would still be required if the landlord wishes to rely on such ground to object renewal of the tenancy. The Administration does not consider that the requirement to specify the ground on Form CR101 is in conflict with the proposed section 119E(1).

Clause 27

(i) The Administration is of the view that innocent parties would be most unlikely to be caught by Clause 27, as each case would be

thoroughly investigated. Prosecution would only be brought against justifiable cases where the unlawful acts are committed with the requisite knowledge or belief of the likely results caused to the tenants.

Distraint

(j) Please refer to **Item 2** of the main reply.

Housing Department
October 2002