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2 February 2004

Secretary for Constitutional Affairs
(Attn. : Mr LAI Yee-tak, Joseph,
Deputy Secretary for Constitutional Affairs)
3/F, Main and East Wing
Central Government Offices
Hong Kong

Dear Mr LAI,

**Electoral Affairs Commission (Financial Assistance
for Legislative Council Elections) (Application
and Payment Procedure) Regulation**

Under section 5 of the Regulation, the Chief Electoral Officer (CEO) must verify whether a claim conforms to the requirement set out in section 3. He may require the candidate to provide further information as he may reasonably require to verify the claim. If a candidate fails to provide further information within the specified period, the CEO may, without prior notice, stop processing the claim.

It is noted that there is no provision for a candidate to revise his claim after it has been submitted. Should an error in the claim be subsequently discovered by the candidate himself or by the CEO during his verification process which may ultimately entitle the CEO to stop processing the claim under section 5(6), what action may be taken by the candidate to rectify his claim?

If CEO invokes section 6 and only part-processes a claim, how would this affect the outcome of the claim? If this would result in rejection of the whole or part of the claim, will the candidate be allowed an opportunity to rectify his claim or to appeal?

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It is noted that failure to lodge an election return as required by section 37 of the Election (Corrupt and Illegal Conduct) Ordinance (Cap. 554) is an offence under section 38 of that Ordinance. Would the inclusion by a candidate in his claim of an auditor's opinion that the relevant election return fails to comply with section 37(1) or (2)(b) of that Ordinance in any material respect amount to an act of self-incrimination? If so, would the requirement of section 3(5)(b) be contrary to any established legal policy or principle?

I shall be grateful for your response before clause-by-clause examination of the Regulation by the Subcommittee on subsidiary legislation relating to 2004 Legislative Council elections.

Yours sincerely,

(Arthur CHEUNG)
Senior Assistant Legal Adviser

c.c. Clerk to Subcommittee