

Our Ref.: C1/30/10
Your Ref.: LS/S/11(1)/03-04

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(Urgent by fax: 2877 5029)

Mr Arthur CHEUNG
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Legislative Council Secretariat
Legal Service Division
4/F, Princes Building
Central, Hong Kong

Dear Mr CHEUNG,

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

Thank you for your letter of 2 February 2004. Our response is set out below for your consideration.

Rectification of claim

Whether a candidate could rectify a claim will depend on when the rectification is to be made. Under the present practice for handling election returns, the Registration and Electoral Office allows a candidate to make rectification before the statutory deadline for submission. This practice will be followed when handling claims under the financial assistance scheme, i.e. a candidate will be allowed to rectify his claim before the statutory deadline for making a claim. If a candidate needs to rectify his election return accompanying the claim after the statutory deadline, he has to apply for a court order under section 40 of the Election (Corrupt and Illegal Conduct) Ordinance (ECICO) (Cap. 554).

Under section 5(3) of the Regulation, “the Chief Electoral Officer (CEO) may require the candidate who makes the claim or any candidate on the list of candidates in respect of which the claim is made to provide further information as he may reasonably require to verify the claim”. In our view, such “further information” may be provided for the purpose of correcting any error identified by the CEO during the verification process.

Part processing of claim

In case the CEO invokes section 6 of the Regulation, only that part of the return that complies with the requirements set out in section 37(1) and (2)(b) of the ECICO will be processed. The processed part will determine the outcome of the claim.

Under normal circumstances, the CEO will not reject the whole or part of the claim without seeking clarification or “further information” from the candidate under section 5 of the Regulation. Therefore, the candidate should have an opportunity to rectify any error identified by the CEO.

Self incrimination

On the question of whether 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 the ECICO in any material respect would amount to an act of self-incrimination, our legal advice is that the question should not arise. This is because –

- (i) the opinion is made by the auditor, not the candidate;
- (ii) it is not mandatory for the candidate to submit an auditing report. He would only be required to do so if he chooses to make a claim under the Regulation;
- (iii) under the ECICO, there is already a requirement for the candidate to submit and verify his election return; and
- (iv) non-compliance with section 37(1) and (2)(b) of the ECICO would not necessarily amount to an offence. Under section 40 of the Ordinance, a candidate may apply to the court for granting of relief in certain circumstances, so as to take the opportunity to

make necessary rectification after submission of the election return.

Yours sincerely,

(Joseph Y T LAI)
for Secretary for Constitutional Affairs

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