

立法會
Legislative Council

LC Paper No. CB(1)1819/11-12(08)

Ref: CB1/PL/PS

Panel on Public Service
Meeting on 21 May 2012

**Background brief on Government's policy and practices on
its employment of non-permanent residents of Hong Kong**

Purpose

This paper provides background information on Government's policy and practices on employment of non-permanent residents of Hong Kong.

Background

Media reports and referral from the House Committee

2. On 23 April 2012, it was reported that the Chief Executive-elect's Office ("CEEEO") had appointed Miss Ran CHEN, a non-permanent resident of the Hong Kong Special Administrative Region ("HKSAR"), as the Project Officer of CEEEO. According to a press release issued by CEEEO on 23 April 2012 (**Appendix I**), Miss CHEN is permitted to work in Hong Kong under the Immigration Arrangements for Non-local Graduates. The post of Project Officer of CEEEO is a short-term appointment until June 30 this year. Approval for her direct appointment has been sought from the Civil Service Bureau ("CSB").

3. At its meeting on 27 April 2012, the House Committee considered a letter from Hon WONG Yuk-man (**Appendix II**) proposing that the Legislative Council follow up on the appointment of Miss Ran CHEN. Mr WONG queried if the appointment was in

breach of the relevant provisions in the Basic Law. After deliberations, the House Committee agreed that the relevant policy matter be referred, under rule 20(i) of the House Rules, to the Panel on Public Service for consideration.

Relevant provisions of the Basic Law

4. First paragraph of Article 99 of the Basic Law stipulates that "[p]ublic servants serving in all government departments of the Hong Kong Special Administration Region must be permanent residents of the Region, except where otherwise provided for in Article 101 of this Law regarding public servants of foreign nationalities and except for those below a certain rank as prescribed by law." Article 101 of the Basic Law stipulates that "[t]he Government of the Hong Kong Special Administrative Region may employ British and other foreign nationals previously serving in the public service in Hong Kong, or those holding permanent identity cards of the Region, to serve as public servants in government departments at all levels, but only Chinese citizens among permanent residents of the Region with no right of abode in any foreign country may fill the following posts: the Secretaries and Deputy Secretaries of Departments, Directors of Bureaux, Commissioner Against Corruption, Director of Audit, Commissioner of Police, Director of Immigration and Commissioner of Customs and Excise."

5. According to Civil Service Bureau Circular No. 22/98, the requirement of permanent resident status applies to all new recruits appointed on or after 1 July 1997, and to those officers who are re-appointed with a break in service on or after 1 July 1997. Recruitment and appointment of non-local candidates who are not permanent residents is subject to the advice of the Public Service Commission ("PSC"). Subject to the advice of PSC, Heads of Departments or Heads of Grades must also seek prior approval of CSB before the commencement of the recruitment exercise if they envisage a need to recruit candidates who are not permanent residents. No offer of appointment should be made to a candidate who is not a permanent resident without the prior approval of CSB.

Latest developments

6. Dr Hon Margaret NG and Hon Fred LI Wah-ming each raised an oral question on the appointment of Miss Ran CHEN at the Council meeting on 9 and 16 May 2012 respectively. The questions and the Administration's replies are in **Appendix III**.

7. The Administration has been invited to brief members on the Government's policy and practices on its employment of non-permanent residents of Hong Kong at the Panel's meeting on 21 May 2012.

Council Business Division 1
Legislative Council Secretariat
17 May 2012

Press Releases

CEEEO responds to media enquiries

The Chief Executive-elect's Office (CEEEO) made the following statement in response to media enquiries on the appointment of Miss Ran Chen as the Project Officer (PO) of CEEEO:

The post of PO of CEEEO is a short-term appointment until June 30 this year. As the duration of the appointment is shorter than three months, it is important for the appointee to be familiar with the manifesto and past dealings of the Chief Executive-elect (CE-elect) in order to be able to hold down the duties of the post immediately. Since Miss Chen has already been working for the CE-elect for a number of years, the CEEEO found her a suitable candidate for the job. Approval for her direct appointment has been sought from the Civil Service Bureau.

Miss Chen is not a permanent resident of Hong Kong. She is permitted to work in Hong Kong under the Immigration Arrangements for Non-local Graduates. According to the Arrangements, she can take up and change employment during her permitted stay without seeking prior approval from the Immigration Department.

Miss Chen was a member of the Communist Youth League of China. She has not paid her membership fee since August 2005 and has not been involved in the work and activities of the League since then. She is therefore no longer a member of the League according to its rules.

Ends/Monday, April 23, 2012

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附錄II
Appendix II

致香港特別行政區
內務委員會主席劉健儀議員(經秘書處轉交):

立法會CB(2)1819/11-12(01)號文件
(只備中文本)
LC Paper No. CB(2) 1819/11-12(01)
(Chinese version only)

要求立法會跟進有關陳冉獲候任特首辦聘用之事宜

昨(23)日有報章報道,「候任特首辦發言人證實,受聘為候任特首辦項目主任的陳冉,現時並非香港永久性居民,該職位屬短期聘任。候任特首辦表示,聘請陳冉是因為她熟識候任行政長官的政綱,及以往各種事務,有關工作有一定延續性,所以作短期聘任,已向公務員事務局申請。」

本人認為有關安排有可能違反《基本法》第一百零一條,候任特首辦與公務員事務局有必要交代事件和回應公眾的質疑,因此本人懇請主席能批准將有關事宜列入本周五的內務委員會會議議程之中,讓各位議員討論立法會應否跟進和如何跟進事件。

立法會議員黃毓民 謹啟

二零一二年四月廿四日



Civil Service Bureau

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Information and news

LCQ4: Manpower arrangement of CEEO

Following is a question by the Dr Hon Margaret Ng and a reply by the Secretary for the Civil Service, Miss Denise Yue, in the Legislative Council today (May 9):

Question:

In the paper on the plan to set up the Chief Executive-elect's Office (CEEEO) submitted to the Panel on Constitutional Affairs of this Council on January 16, 2012, it is stated that regarding the staff establishment of CEEEO, there will be only one staff member in the rank of Special Assistant (SA) which is a special appointment on non-civil service terms. Yet the media earlier reported that the Chief Executive-elect intended to make arrangement for the post of SA to be taken up by three persons. One of the appointees confirmed to the media on April 12, 2012 that she had been employed by CEEEO on Non-Civil Service Contract terms to fill the post of Public Relations Officer. Such a post does not exist in the original establishment of CEEEO. Some members of the public have pointed out that splitting one post for several persons to take up, irrespective of whether or not additional public funds are involved, does not comply with the original arrangement for the use of public funds, and it is against the establishment system for government officers. In this connection, will the Government inform this Council:

- (a) upon the splitting of the aforesaid SA post into several posts, whether the persons appointed to such posts are government officers;
- (b) whether it has assessed if the practice of splitting one single post into several posts is against the establishment system for government officers; if the outcome of the assessment is in the positive, how the Government will follow up; if the outcome of the assessment is in the negative, of the reasons for that; and
- (c) whether the Government has assessed the possible impact of the practice of splitting one single post into several posts; if it has, of the details; if not, the reasons for that?

Reply:

President,

My consolidated reply to the three-part question raised by the Hon Alan Leong on behalf of Dr the Hon Margaret Ng is as follows.

The Administration briefed the Panel on Constitutional Affairs of this Council on the plan to set up a Chief Executive-elect Office (CEEEO) on January 16, 2012, more than two months before election of

the fourth-term Chief Executive (CE). A paper on the plan was submitted to the Panel before the meeting. According to the paper, having regard to overseas practices and the situation in Hong Kong, the Administration planned to set up the CEEO, which would formally commence operation on the day the fourth-term CE was elected, namely on the March 25, this year, and would cease to operate on the June 30 this year.

The aforesaid paper stated that the CEEO was expected to assist the CE-elect to undertake work in a number of major areas, including to form a governing team for the new term of Government within a short period of time; to prepare for drawing up a policy plan for the new Government based on the CE-elect's election platform; to make arrangements with the incumbent Government for a smooth transition; and to liaise extensively with different sectors of the community. As such, the CEEO would need to be staffed by civil servants conversant with the Government's internal operations as well as non-civil service employees conversant with the CE-elect's manifesto and vision for governance, so as to provide effective assistance to the CE-elect and to ensure a smooth transition between the new and the existing Governments.

Since election of the fourth-term CE had not yet taken place when the Administration planned the manpower arrangement of the CEEO, no discussion could be held with the CE-elect. Accordingly, the Administration could only assess the likely manpower requirement on the basis of the above considerations, and suggested the provision of the 26 posts to the CEEO as set out in the Constitutional Affairs Panel paper. Of these posts, apart from the Head of the CEEO and the Special Assistant which were to be special appointments on non-civil service terms, the rest were to be civil service posts to be filled by deployment from within the Government. To allow flexibility, these civil service posts might also be filled from outside the Government as the CE-elect thought fit. The Panel paper also specifically stated that if the CE-elect found it necessary to increase the manpower of the CEEO, we would make suitable arrangements.

Following the establishment of the CEEO and having regard to the operational needs of the CE-elect, the Administration has deployed 28 civil servants to work in the CEEO. The Administration has also agreed that in addition to the two special appointments on non-civil service terms (i.e. the Head of the CEEO and the Special Assistant), two additional non-civil service posts of Project Officer and one additional non-civil service post of Public Relations Officer would be provided to the CEEO until June 30 this year. The additional posts are to meet the CE-elect's manpower requirement. Holders of these additional non-civil service posts are all government employees.

In gist, the Administration approved the provision of three additional non-civil service posts for the CEEO, and not the splitting of the Special Assistant post into several posts. We understand that the CEEO, having considered its operational arrangement and needs, has no plan at present to appoint any person to the Special Assistant post.

Thank you.

Wednesday, May 8, 2012

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Information and news

LCQ5: Employment of staff at CEEO

Following is a question by the Hon Fred Li Wah-ming and an reply by the Secretary for the Civil Service, Miss Denise Yue, in the Legislative Council today (May 16):

Question:

Recently, the Chief Executive-elect (CE-elect) has appointed Miss Ran Chen, who has a background of Communist Youth League membership, to the post of Project Officer in the CE-elect's Office (CEEEO). However, according to the press reports, as Miss Chen has been residing in Hong Kong for only six years and nine months, she is not a Hong Kong permanent resident. Article 99 of the Basic Law provides that public servants serving in the Government of the Hong Kong Special Administrative Region must be permanent residents of the Region and therefore, Miss Chen is not eligible to join the Civil Service. In this connection, will the Government inform this Council:

- (a) whether the Civil Service Bureau has assessed the impact of approving this application on the existing systems of civil servants and non-civil service contract staff; and
- (b) whether the authorities will, in response to the queries and objection raised in society at large in respect of such an appointment, re-assess if the appointment procedures and decision are correct, and consider withdrawing the appointment, as well as ensure that all sensitive and important appointments in the future will comply with the existing appointment procedures and requirements?

Reply:

President,

My consolidated reply to the two-part question raised by the Hon Fred Li is as follows.

The first part of Article 99 of the Basic Law states, and I quote, "Public servants serving in all government departments of the Hong Kong Special Administrative Region must be permanent residents of the Region, except where otherwise provided for in Article 101 of this Law regarding public servants of foreign nationalities and except for those below a certain rank as prescribed by law." End of quote.

The second part of Article 101 states, and I quote, "The Government of the Hong Kong Special Administrative Region may also employ British and other foreign nationals as advisers to government departments and, when required, may recruit qualified candidates from outside the Region to fill professional and technical posts in government departments. These foreign nationals shall be employed only in their individual capacities and shall be responsible to the government of the Region." End of quote.

In April this year, the Civil Service Bureau (CSB) approved an application from the Chief Executive-elect's Office (CEEEO) to create two additional non-civil service Project Officer positions and one additional non-civil service Public Relations Officer position until June 30 this year, to meet the service needs of the CEEEO.

In accordance with the existing system, the CEEEO applied to the CSB for approval to employ Miss Ran Chen, a non-permanent resident, to fill one of the Project Officer positions. In its application, the CEEEO explained it is not desirable to conduct an open recruitment exercise to identify a suitable candidate to fill the Project Officer position since the opening is for less than three months, since work must start immediately, since the duties involved include policy studies and speech drafting and the appointee must be conversant with the CE-elect's policy manifesto and its underlying rationale. The CEEEO considers Miss Ran Chen is a qualified candidate for the position because she had worked for the CE-elect in his Election Campaign Office for more than six months. Having taken into account all the relevant factors, including the operational need of the CEEEO, the time constraint, the duties of the Project Officer position, the continuity between these duties and the work involved in formulating the CE-elect's policy manifesto during his election campaign, as well as Miss Ran Chen's participation throughout the formulation of the CE-elect's policy manifesto and the community liaison work she did during the CE-elect's election campaign, the CSB approved the CEEEO's employment of Miss Ran Chen on non-civil service contract terms and waived the "permanent resident" requirement.

The CSB and the CEEEO processed Miss Ran Chen's appointment in accordance with the existing recruitment requirements. The CSB considers that the said appointment would not have any negative impact or adverse effect on the existing civil service and non-civil service recruitment systems. The Administration will not re-assess its decision on the said appointment or consider rescinding the said appointment.

Thank you.

Wednesday, May 16, 2012

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