

立法會
Legislative Council

LC Paper No. LS7/16-17

**Paper for the House Committee Meeting
on 4 November 2016**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 28 October 2016**

Tabling in LegCo : Council meeting of 2 November 2016

Amendment to be made by : Council meeting of 30 November 2016 (or that of 11 January 2017 if extended by resolution)

**Public Health and Municipal Services Ordinance (Public
Pleasure Grounds) (Amendment of Fourth Schedule) (No. 2)
Order 2016** (L.N. 163)

**Public Health and Municipal Services Ordinance (Public
Swimming Pools) (Amendment of Fourteenth Schedule)
Order 2016** (L.N. 164)

L.N. 163 and L.N. 164 are made by the Director of Leisure and Cultural Services ("the Director") under sections 106 and 42A of the Public Health and Municipal Services Ordinance (Cap. 132) respectively.

L.N. 163

2. L.N. 163 sets aside 10 places for use as public pleasure grounds. It also updates the list of public pleasure grounds in the Fourth Schedule to Cap. 132 to reflect the above changes accordingly. The effect is to vest the general management and control of the new public pleasure grounds in the Director.

3. L.N. 163 also provides that four places cease to be set aside for use as public pleasure grounds and deletes these places from the Fourth Schedule to Cap. 132.

L.N. 164

4. L.N. 164 designates Tsing Yi Southwest Swimming Pool as a public swimming pool and adds this swimming pool to the Fourteenth Schedule to Cap. 132 to reflect the designation. The effect of L.N. 164 is to vest the management and control of Tsing Yi Southwest Swimming Pool in the Director.

5. According to the two Legislative Council ("LegCo") Briefs (no reference number) issued by the Leisure and Cultural Services Department on 25 October 2016, the Government has consulted the respective District Councils concerned and they supported the amendments.

6. As advised by the Clerk to the Panel on Home Affairs, the Panel has not been consulted on L.N. 163 and 164.

7. L.N. 163 and L.N. 164 came into operation on the day of publication in the Gazette, i.e. 28 October 2016.

Inland Revenue Ordinance (Amendment of Schedule 17E) Notice 2016

(L.N. 165)

8. L.N. 165 is made by the Secretary for Financial Services and the Treasury under section 50J of the Inland Revenue Ordinance (Cap. 112). It amends Schedule 17E to Cap. 112 by adding two jurisdictions to the list of reportable jurisdictions and by adding 100 jurisdictions to the list of participating jurisdictions in Part 2 of Schedule 17E for the implementation of automatic exchange of financial account information in tax matters ("AEOI") in Hong Kong.

9. AEOI is the latest international standard promulgated by the Organisation for Economic Co-operation and Development for regulating the collection of financial account information from financial institutions by different governments in various jurisdictions and the exchange of information between the tax authorities of those jurisdictions. The legal framework for implementing AEOI in Hong Kong is provided under the Inland Revenue (Amendment) (No. 3) Ordinance 2016 (Ord. No. 22 of 2016) ("the Amendment Ordinance"), which came into effect on 30 June 2016. In gist, the Amendment Ordinance imposes an obligation on reporting financial institutions to establish, maintain and apply due diligence procedures for identifying accounts they are required to report on and provides for a list of reportable jurisdictions¹ and a list of participating

¹ "Reportable jurisdiction", as defined under section 50A(1), means a territory outside Hong Kong that is a party to an arrangement having effect under section 49(1A) and requiring disclosure of information concerning tax of the territory.

jurisdictions² (Schedule 17E). Members may wish to refer to the Report of the Bills Committee on Inland Revenue (Amendment) Bill 2016 ("the Bills Committee") (LC Paper No. CB(1)963/15-16) for further details.

10. L.N. 165 amends Part 1 of Schedule 17E to Cap. 112, as added by the Amendment Ordinance, by including Japan and the United Kingdom of Great Britain and Northern Ireland ("UK") as "reportable jurisdictions", with "2018" as the corresponding "reporting year". L.N. 165 also amends Part 2 of Schedule 17E to Cap. 112 by adding all the jurisdictions that are committed to adopting AEOI by 2018 as "participating jurisdictions"³.

11. According to paragraph 10 of the LegCo Brief (File Ref: TsyB R 183/700-6/7/0 (C)) issued by the Financial Services and the Treasury Bureau on 26 October 2016, the Inland Revenue Department ("IRD") has signed Competent Authority Agreements with the tax authorities of Japan and UK respectively. The effect of L.N. 165 is that reporting financial institutions will come under a positive obligation to establish and perform due diligence procedures to identify financial accounts held by tax residents of Japan and UK, collect reportable information on these accounts, and furnish such information to IRD in accordance with AEOI standard starting from the reporting year (i.e. 2018).

12. According to paragraph 21 of the LegCo Brief, the Administration has launched a consultation exercise from April to June 2015 on the implementation of AEOI in Hong Kong. According to the Administration, stakeholders such as financial institutions and professional associations generally support the overall direction to catch up with the latest international AEOI standard and implement AEOI in Hong Kong.

13. According to the Clerk to the Panel on Financial Affairs, the Panel has not been consulted on L.N. 165. As advised by the Clerk to the Bills Committee, Members discussed a number of issues including the scope of AEOI, criteria for identifying reportable jurisdictions, reporting obligations and enforcement against non-compliances. The Bills Committee requested the Administration to explain clearly the AEOI requirements to the public and financial institutions concerned to ensure smooth implementation of AEOI. The Administration indicated that it would

² According to paragraph 10 of the LegCo Brief, in the context of Hong Kong, "participating jurisdiction" refers to a territory outside of Hong Kong that is committed to adopting AEOI by 2018.

³ Under AEOI, the distinction between participating and non-participating jurisdiction is important in the context of account holders which are investment entities defined under section 50A(1) of Cap. 112. As provided under section 50B, if the account holder is a resident of a non-participating jurisdiction, the financial institution has a duty to establish and conduct due diligence procedures to determine whether the "controlling person" (defined under section 50A(1)) of the account holder is a resident of a participating jurisdiction, in order to determine whether information should be furnished to IRD.

conduct publicity regarding the application of the tax residency rules in reportable jurisdictions, and draw up clear guidelines or departmental instructions and practice notes to facilitate implementation of AEOI arrangements by financial institutions.

14. L.N. 165 will come into operation on 31 December 2016.

Concluding observations

15. No difficulties have been identified in the legal and drafting aspects of the above items of subsidiary legislation.

Prepared by

Joyce CHAN
Assistant Legal Adviser
Legislative Council Secretariat
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