

LEGISLATIVE COUNCIL BRIEF

Merchant Shipping
(Limitation of Shipowners Liability) Ordinance
(Cap 434)

MERCHANT SHIPPING (LIMITATION OF SHIPOWNERS LIABILITY) (RATE OF INTEREST) ORDER

INTRODUCTION

The Monetary Authority (MA) will publish the Merchant Shipping (Limitation of Shipowners Liability) (Rate of Interest) Order (the Order), at Annex, in the Gazette on 31 May 2002.

BACKGROUND AND ARGUMENT

2 The Convention on Limitation of Liability for Maritime Claims, 1976 (the Convention) provides for and limits the liability of shipowners and others. The Convention aims at laying down uniform rules relating to the liability of shipowners and salvors in respect of certain maritime claims. It specifies the claims which can be limited such as those in respect of loss of life or personal injury or loss of or damage to property occurring on board or in direct connection with the operation of ship or with salvage operations. It also specifies the circumstances when the limitations do not apply.

3 According to paragraph 1 of Article 11 of the Convention, any person alleged to be liable for maritime claims may constitute a fund with the court or other competent authority in any State Party¹ in which legal proceedings are instituted in respect of claims subject to limitation. The fund shall be constituted in the sum of such of the amounts set out in the Convention as are applicable to claims for which that person may be liable, together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund. Any fund thus

¹ State Party is defined as a party to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 or to the Convention on Limitation of Liability for Maritime Claims, 1976 in respect of a particular country.

constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked.

4 The Merchant Shipping (Limitation of Shipowners Liability) Ordinance (the Ordinance) was enacted in October 1993 to enable the Convention to have the force of law in Hong Kong. Section 19(1) of the Ordinance empowers the MA to prescribe from time to time by order the rate of interest for the purposes of paragraph 1 of Article 11 of the Convention.

5 The prevailing interest rate is 9.91%, which was prescribed by the MA in June 1998. Following a series of interest rate reductions in the US, the Best Lending Rate in Hong Kong has fallen correspondingly. The MA considers that a new interest rate should be prescribed to reflect the changes in interest rates.

THE ORDER

6 The Order consolidates the various Orders made under section 19(1) of the Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Cap 434) that prescribed the rates of interest to be applied to different periods of time into one Order; and prescribes the new rate of interest applicable on or after 31 May 2002.

BASIC LAW IMPLICATIONS

7 The Department of Justice advises that the Order is consistent with the Basic Law.

HUMAN RIGHTS IMPLICATIONS

8 The Department of Justice advises that the Order has no human rights implications.

BINDING EFFECT OF THE LEGISLATION

9 The Order will not affect the current binding effect of the existing provisions of the Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

10 There are no financial and staffing implications for the Government.

LEGISLATIVE TIMETABLE

11 The Order is a piece of subsidiary legislation. It will be gazetted on 31 May 2002 and will be tabled in the Legislative Council on 5 June 2002 for negative vetting.

PUBLIC CONSULTATION

12 The general public is not expected to be interested in the Order.

ENQUIRY

13 Enquires on this brief may be directed to Ms Kinnie Wong, Assistant Secretary (Banking and Monetary), Financial Services Bureau (telephone number: 2527 3974).

Financial Services Bureau
31 May 2002