

LEGISLATIVE COUNCIL BRIEF

The Secretary for Financial Services and the Treasury submits the following note for Members' information:

<u>Title of the Note</u>	<u>Date of ExCo</u>	<u>Date of Gazette</u>
Merchant Shipping (Limitation of Shipowners Liability) (Rate of Interest) (Amendment) Order 2007	--	28 December 2007
28 December 2007	Financial Services and the Treasury Bureau	

LEGISLATIVE COUNCIL BRIEF

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

MERCHANT SHIPPING (LIMITATION OF SHIPOWNERS LIABILITY) (RATE OF INTEREST) (AMENDMENT) ORDER 2007

INTRODUCTION

The Monetary Authority (“the MA”) published the Merchant Shipping (Limitation of Shipowners Liability) (Rate of Interest) (Amendment) Order 2007 (“the Order”), at **Annex 1**, in the Gazette on 28 December 2007. This Order amends Section 1 of the Merchant Shipping (Limitation of Shipowners Liability) (Rate of Interest) Order (Cap. 434 sub. leg. D) at **Annex 2**.

BACKGROUND

2. The Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Cap. 434) (“Cap. 434”) was enacted in October 1993 principally to provide for and to limit the liability of shipowners and others. Among other things, it enables the Convention on Limitation of Liability for Maritime Claims, 1976 (“the Convention”)¹ to have the force of law in Hong Kong.

3. Section 19(1) of Cap. 434 stipulates that the MA may from time to time by order prescribe the rate of interest for the constitution of a limitation fund under Article 11 of the Convention. Under paragraph 1 of Article 11 of the Convention, shipowners and salvors may limit their liabilities for maritime claims by constituting limitation funds. Such limitation funds shall comprise the amounts set out in the Convention together with interest thereon. The fund shall be available only for the payment of claims in respect of which limitation of liability is invoked. The rate of interest (to be prescribed by the MA from time to time) is used to determine the interest amount from the date of the occurrence giving rise to the liability until the date of the constitution of the fund.

¹ 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.

JUSTIFICATIONS

4. The prevailing interest rate, which was prescribed by the MA (with reference to the six-month-moving-average of the Hongkong and Shanghai Banking Corporation Limited (“HSBC”)’s Best Lending Rate) on 25 August 2006 and effective from 1 September 2006, is 7.96% per annum. Since then, the HSBC has lowered its Best Lending Rate for five times to 6.75% per annum at present. The MA considers that a new interest rate should be prescribed to reflect the prevailing market conditions.

THE ORDER

5. The Order prescribes the new interest rate of 7.45% per annum, applicable on or after 28 December 2007, by amending Section 1 of the Merchant Shipping (Limitation of Shipowners Liability) (Rate of Interest) Order (Cap. 434 sub. leg. D), which prescribes the rates of interest to be applied to different periods of time. The new rate has been prescribed with reference to the six-month-moving-average of the HSBC’s Best Lending Rate.

LEGISLATIVE TIMETABLE

6. The Order was gazetted on 28 December 2007 and will be tabled in the Legislative Council on 9 January 2008 for negative vetting. The Order takes effect upon Gazettal.

IMPLICATIONS OF THE PROPOSAL

7. The Order is in conformity with the Basic Law, including the provisions concerning human rights. It has no productivity, environmental or sustainability implications. The Order will not affect the current binding effects of the existing provisions of the Ordinance. It will have negligible financial implications for the Government.

ENQUIRY

8. Enquiries on this brief may be directed to Ms Gillian Hui, Senior Manager (External) of the Hong Kong Monetary Authority (tel: 2878 1303) or Mr Parson Lam, Assistant Secretary, Financial Services and the Treasury Bureau (tel: 2528 9050).

**Hong Kong Monetary Authority
Financial Services and the Treasury Bureau**

28 December 2007

MERCHANT SHIPPING (LIMITATION OF SHIPOWNERS LIABILITY)(RATE OF INTEREST)(AMENDMENT) ORDER 2007

(Made by the Monetary Authority under section 19(1) of the Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Cap. 434))

1. Rate of interest for purposes of limitation fund

Section 1 of the Merchant Shipping (Limitation of Shipowners Liability) (Rate of Interest) Order (Cap. 434 sub. leg. D) is amended –

- (a) in paragraph (o), by repealing “onwards, 7.96%.” and substituting “to 27 December 2007, 7.96%;”;
- (b) by adding –
“(p) from 28 December 2007 onwards, 7.45%.”.

Monetary Authority

December 2007

Explanatory Note

Under paragraph 1 of Article 11 of the Convention on Limitation of Liability for Maritime Claims, 1976 as applied by the Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Cap. 434), shipowners and salvors may limit their liability for maritime claims by constituting limitation funds. A limitation fund shall comprise the amounts set out in the Convention and interest on those amounts.

2. Under section 19 of the Ordinance, the Monetary Authority may from time to time prescribe the rate of interest to be applied to limitation funds constituted under paragraph 1 of Article 11 of the Convention. This Order prescribes the new rate of interest applicable on or after 28 December 2007.

Contents of Section

Chapter: 434D	Title:	MERCHANT SHIPPING (LIMITATION OF SHIPOWNERS LIABILITY) (RATE OF INTEREST) ORDER	Gazette Number:	L.N. 184 of 2006
Section: 1	Heading:	Rate of interest for purposes of limitation fund	Version Date:	01/09/2006

The rate of interest to be applied for the purposes of paragraph 1 of Article 11 of the Convention on Limitation of Liability for Maritime Claims, 1976 is-

- (a) from 16 January 1987 to 30 April 1987, 7.5%;
- (b) from 1 May 1987 to 5 November 1987, 6%;
- (c) from 6 November 1987 to 5 May 1988, 7.38%;
- (d) from 6 May 1988 to 5 October 1989, 5.89%;
- (e) from 6 October 1989 to 14 June 1990, 11.09%;
- (f) from 15 June 1990 to 25 July 1991, 10.24%;
- (g) from 26 July 1991 to 30 April 1992, 9.74%;
- (h) from 1 May 1992 to 22 October 1992, 8.72%;
- (i) from 23 October 1992 to 27 July 1995, 7.48%;
- (j) from 28 July 1995 to 11 June 1998, 8.82%;
- (k) from 12 June 1998 to 30 May 2002, 9.91%;
- (l) from 31 May 2002 to 17 November 2005, 5.16%; (L.N. 203 of 2005)
- (m) from 18 November 2005 to 23 February 2006, 6.55%; (L.N. 203 of 2005; L.N. 27 of 2006)
- (n) from 24 February 2006 to 31 August 2006, 7.38%; (L.N. 27 of 2006; L.N. 184 of 2006)
- (o) from 1 September 2006 onwards, 7.96%. (L.N. 184 of 2006)