

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) Ordinance (Rate of Interest) (Amendment) (No.3) Order 2008	--	12 December 2008
12 December 2008	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) (No.3) ORDER 2008

INTRODUCTION

The Monetary Authority (“the MA”) published the Merchant Shipping (Limitation of Shipowners Liability) (Rate of Interest) (Amendment) (No. 3) Order 2008 (“the Order”), at Annex 1 (o/s, under preparation by DoJ), in the Gazette on 12 December 2008. 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 the Hong Kong and Shanghai Banking Corporation Limited (“HSBC”)’s Best Lending Rate (BLR) on 23 May 2008 and effective from 30 May 2008, is 5.88%. Because of the consecutive cuts of HSBC’s BLR since early 2008, the six-month-moving-average BLR has fallen below the rate prescribed in May 2008 by more than 0.5%. 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 5.2% per annum, applicable on or after 12 December 2008, 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 BLR.

LEGISLATIVE TIMETABLE

6. The Order was gazetted on 12 December 2008 and will be tabled in the Legislative Council on 17 December 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 Linda Tse, Senior Manager (External) of the Hong Kong Monetary Authority (tel: 2878 1382) or Ms Fanny Cheung, Assistant Secretary, Financial Services and the Treasury Bureau (tel: 2528 9050).

Financial Services and the Treasury Bureau

12 December 2008