

## **LEGISLATIVE COUNCIL BRIEF**

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

<b><u>Title of the Note</u></b>	<b><u>Date of ExCo</u></b>	<b><u>Date of Gazette</u></b>
Merchant Shipping (Limitation of Shipowners Liability) (Rate of Interest) (Amendment) Order 2005	--	18 November 2005
18 November 2005	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 2005**

#### **INTRODUCTION**

The Monetary Authority (“the MA”) published the Merchant Shipping (Limitation of Shipowners Liability) (Rate of Interest) (Amendment) Order 2005 (“the Order”), at Annex 1, in the Gazette on 18 November 2005. This Order amends the Merchant Shipping (Limitation of Shipowners Liability) (Rate of Interest) Order (LN 86 of 2002) 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)<sup>1</sup> 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.

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<sup>1</sup> 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 HSBC's Best Lending Rate) in May 2002, is 5.16%. Following a series of interest rate hikes in the US, the HSBC's Best Lending Rate has risen correspondingly. The MA considers that a new interest rate should be prescribed to reflect the changes in market conditions.

## **THE ORDER**

5. The Order prescribes the new interest rate of 6.55%, applicable on or after 18 November 2005, by amending the existing Merchant Shipping (Limitation of Shipowners Liability) (Rate of Interest) Order (LN 86 of 2002), 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 18 November 2005 and will be tabled in the Legislative Council on 23 November 2005 for negative vetting. The Order will take 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 Mr Yik-ko Mo, Senior Manager (External) of the Hong Kong Monetary Authority (telephone number: 2878 1655) or Ms Ivy Chan, Assistant Secretary, Financial Services and the Treasury Bureau (telephone number: 2528 9050).

Financial Services Branch  
Financial Services and the Treasury Bureau  
18 November 2005

**MERCHANT SHIPPING (LIMITATION OF SHIPOWNERS LIABILITY) (RATE OF INTEREST) (AMENDMENT) ORDER 2005**

(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 (l), by repealing “onwards, 5.16%.” and substituting “to 17 November 2005, 5.16%;”;
- (b) by adding –
  - “(m) from 18 November 2005 onwards, 6.55%.”.

Monetary Authority

15 November 2005

**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 liabilities for maritime claims by constituting limitation funds. Such limitation funds shall comprise the amounts set out in the Convention together with interest thereon.

2. According to section 19 of the Ordinance, the Monetary Authority may from time to time prescribe the rate of interest to be applied for the purposes of paragraph 1 of Article 11 of the Convention. This Order prescribes the new rate of interest applicable on or after 18 November 2005.

**L.N. 86 of 2002****MERCHANT SHIPPING (LIMITATION OF SHIPOWNERS LIABILITY)  
(RATE OF INTEREST) ORDER**

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

**1. Rate of interest for purposes  
of limitation fund**

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 onwards, 5.16%.

**2. Repeals**

The following Orders are repealed—

- (a) Merchant Shipping (Liability of Shipowners and Others) (Rate of Interest) (Hong Kong) Order 1987 (L.N. 13 of 1987);
- (b) Merchant Shipping (Liability of Shipowners and Others) (Rate of Interest) (Hong Kong) (No. 2) Order 1987 (L.N. 123 of 1987);
- (c) Merchant Shipping (Liability of Shipowners and Others) (Rate of Interest) (Hong Kong) (No. 3) Order 1987 (L.N. 368 of 1987);
- (d) Merchant Shipping (Liability of Shipowners and Others) (Rate of Interest) (Hong Kong) Order 1988 (L.N. 139 of 1988);

- (e) Merchant Shipping (Liability of Shipowners and Others) (Rate of Interest) (Hong Kong) Order 1989 (L.N. 331 of 1989);
- (f) Merchant Shipping (Liability of Shipowners and Others) (Rate of Interest) (Hong Kong) Order 1990 (L.N. 185 of 1990);
- (g) Merchant Shipping (Liability of Shipowners and Others) (Rate of Interest) (Hong Kong) Order 1991 (L.N. 304 of 1991);
- (h) Merchant Shipping (Liability of Shipowners and Others) (Rate of Interest) (Hong Kong) Order 1992 (L.N. 115 of 1992);
- (i) Merchant Shipping (Liability of Shipowners and Others) (Rate of Interest) (Hong Kong) (No. 2) Order 1992 (L.N. 333 of 1992);
- (j) Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Rate of Interest) Order 1995 (Cap. 434 sub. leg.); and
- (k) Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Rate of Interest) Order 1998 (Cap. 434 sub. leg.).

Joseph C. K. YAM  
Monetary Authority

27 May 2002

### **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 liabilities for maritime claims by constituting limitation funds. Such limitation funds shall comprise the amounts set out in the Convention together with interest thereon.

2. According to section 19 of the Ordinance, the Monetary Authority may from time to time prescribe the rate of interest to be applied for the purposes of paragraph 1 of Article 11 of the Convention. This Order—

- (a) consolidates the various Orders prescribing the rates of interest to be applied to different periods of time into one Order; and
- (b) prescribes the new rate of interest applicable on or after 31 May 2002.