

PROVISIONAL LOCAL VESSELS ADVISORY COMMITTEE

Promulgation of the Rate of Interest under the Merchant Shipping (Limitation of Shipowners Liability) Ordinance, Cap. 434

Purpose

1. The purpose of this paper is to seek Members' views on the proposal to amend Section 19(1) of the Merchant Shipping (Limitation of Shipowners Liability) Ordinance, Cap. 434 (the Ordinance) to provide that the rate of interest to be applied for calculating the interest portion of a fund constituted in accordance with paragraph 1 of Article 11 of the Convention will be the Best Lending Rate set by The Hongkong and Shanghai Banking Corporation Limited (HSBC) from time to time.

Background

2. The Ordinance was enacted on 1 October 1993 to enable the Convention on Limitation of Liability for Maritime Claims, 1976 (the Convention) to have the force of law in Hong Kong. The Convention provides for and limits the liability of shipowners and salvors in respect of maritime claims. It specifies the claims which can be limited such as those in respect of the 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.

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 Party in which legal proceedings are instituted in respect of claims subject to limitation. The fund shall be constituted in the sum of such amounts as set out in the Convention that 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 constituted shall be available only for the payment of claims.

4. According to Section 19(1) of the Ordinance, the Monetary Authority may from time to time by order prescribe the rate of interest to be applied for the purposes of paragraph 1 of Article 11 of the Convention.

5. The Administration considers that there is a need to review section 19(1) of the Ordinance should an opportunity arise as the current arrangement is not desirable, particularly at times when interest rate fluctuations are frequent.

The Proposed Amendment

6. It is proposed that section 19(1) of the Ordinance be amended to provide that the rate of interest to be applied for calculating the interest portion of a fund constituted in accordance with paragraph 1 of Article 11 of the Convention will be the Best Lending Rate (BLR) set by the HSBC (HSBC BLR) from time to time. This will replace the provision that the rate of interest will be prescribed by the Monetary Authority.

7. The proposed amendment will involve a change of the way the rate of interest will be promulgated under section 19(1) of the Ordinance, but not the interest rate to be applied for calculating the interest portion of a fund. Under the existing arrangement, the Monetary Authority prescribes the rate of interest based on the six-month moving average of the HSBC BLR.^{Note 1} Under the proposed arrangement, the HSBC BLR will be the rate of interest to be applied for the purposes of paragraph 1 of Article 11. The rate of interest last promulgated by the Monetary Authority is 5.16%, which is very close to the current HSBC BLR of 5%.

8. The major objective of the proposed amendment is to enhance the transparency, clarity and robustness of the interest rate prescription mechanism. The proposed arrangement sets out clearly that the rate of interest applicable to paragraph 1 of Article 11 is the HSBC BLR which can be easily and readily obtained from public sources, such as Bloomberg and HKMA Monthly Statistical Bulletin. Such an arrangement is more transparent than a mechanism whereby the interest rate is prescribed by the Monetary Authority.

9. The proposed arrangement also ensures that the rate of interest used is most up-to-date. Currently, it takes at least several weeks to complete the legislative procedure to gazette a new rate of interest. The proposed mechanism would ensure that the rate of interest prescribed is close to the relevant market interest rate, especially at times when interest rate fluctuations are frequent. This would enhance the timeliness and credibility of the interest rate prescription mechanism.

10. Such practice is also in line with the existing practices of a number of other Ordinances, for example,

^{Note 1} The purpose of using the moving average is to even out the fluctuations in the BLR.

- **Exchanges (Special Levy) Ordinance** - Section 6 of the Exchanges (Special Levy) Rule (Cap 351A) - ".....a late remission charge of **2 per cent above the best lending rate of The Hongkong and Shanghai Banking Corporation Limited** calculated on a daily basis during the period of default on the amount of the late remission at the date of default."
- **Legal Practitioners Ordinance** - Schedule 1 of the Solicitors (Professional Indemnity) Rules Section 2 (1(d)(ii)) (Cap 159M) - ".....interest on the amount of such balance at the rate of **4% per annum above the best lending rate from time to time of The Hongkong and Shanghai Banking Corporation Limited** calculated from the date stipulated in or prescribed by the Society under rule 8(1)(c) until receipt of payment by the Company."

Consultations

11. In addition to the Provisional Local Vessels Advisory Committee, the Shipping Consultative Committee and the Port Operations Committee will also be consulted for the proposed amendments.

Advice Sought

12. Members are invited to offer advice on whether the Administration should proceed with the proposed legislative amendments.

*Hong Kong Monetary Authority
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