

Welcome to the fourth edition of Highlight

In this issue, we turn our attention to commercial matters in the offshore shipping industry. We look at the much heralded Bimco WINDTIME Charterparty, which should serve to bring some consistency to contracts in the offshore wind sector, and at chartering opportunities in the North Sea. We hope that our readers will find something within this issue to promote success and safeguard against some legal pitfalls!

In June, we were delighted to host a drinks reception alongside the Chamber of Shipping during its visit to Aberdeen. It was pleasing to see such a good mix of people in relaxed and informal surroundings, while reaffirming our commitment to the core areas of our practice. On that related theme, Ashleigh McConnell has been assumed

as a Partner within our Private Client team. This is a very well deserved promotion and recognises Ashleigh's hard work and service to clients since joining Mackinnons in 2009.

As ever, this publication is aimed at our clients and whilst we select topical issues, we are always happy to hear feedback and focus on specifically requested subjects in future editions. 2013 has undoubtedly been a positive year with growth in the commercial and residential sectors – let's hope that this will continue!

Wishing you all a Merry Christmas and a prosperous 2014.

Martin Sinclair *Partner*

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*Wishing you a Merry Christmas and a Happy New Year!
From all at Mackinnons*



Kirstin McPherson – Solicitor

BIMCO Introduce Windtime Charterparty

The renewables sector is developing rapidly, particularly in relation to wind energy and technology, with experience and confidence growing by the day. Entering into a contract to carry out complex services in the offshore wind energy sector often used to be based on standard term contracts that were already in existence for the offshore industry generally. However, vast amendments were necessary to ensure that these contracts were relevant to the tasks at hand, as well as incorporating appropriate liabilities and indemnities for the contracting parties. The result of this was often stark differences in the contracts for similar projects, providing a complete lack of consistency.

In 2010, many of the main players in the offshore wind energy sector approached BIMCO to ascertain whether they thought it would be worthwhile to develop a new standard term contract, specific to offshore windfarm development. After consultation, BIMCO discovered that there was great interest in this from both vessel owners and charterers. The offshore wind energy sector had primarily used BIMCO's SUPPLYTIME 2005 contract, which is designed for offshore service vessels generally. However, SUPPLYTIME 2005 contains a number of provisions which are irrelevant to the contemplated tasks and also lacks definitions and terms specific to this sector.

Since discussions commenced in 2010, BIMCO has developed a contract specific to this sector, which is called WINDTIME. It has been modelled on the SUPPLYTIME 2005 contract, due to its familiarity to operators in this sector, but is however limited to covering vessels used in the transfer of personnel and equipment to and from offshore wind farm installations.

BIMCO has prepared excellent guidance on WINDTIME but, as with any contract, it must be tailored to the specific needs of the parties. Whether you are a vessel owner, charterer or an individual seeking guidance in relation to the WINDTIME contract, please contact us at aberdeen@mackinnons.com

Dispute Resolution under Standard Term Contracts

As mentioned elsewhere in this edition of Highlight, BIMCO has introduced a new, bespoke standard term contract for vessels engaged to transfer crew and equipment to offshore wind farm installation sites. As with the other, more familiar BIMCO contracts, WINDTIME includes a Dispute Resolution clause, and this seems like an apposite time to consider these generally.

Dispute resolution clauses tend not to be at the top of the list of priorities when negotiating contracts, with the more obviously commercial aspects taking centre stage. However, these clauses can be very important and while no-one ever goes into a contract expecting disputes to arise, it is an unfortunate fact of business that disputes do arise.

It is important to note that the standard clause does require an element of input from the parties – between them, they have to select both the law they wish to use and the place where they wish to resolve the dispute. In our experience, it is not uncommon for this to be overlooked, leaving a situation where a contract says it is governed by and construed under three different laws. That should be avoided!

The standard wording of the clause also provides for Arbitration as a first choice. There are many different types of Arbitration and each have their own rules. Parties should be aware of what is required when they are signing up for these as some are more expensive or intensive than others.

When choosing the governing law, parties should bear in mind where their operations are based as much as where the project is. If the project is in waters off Singapore, but both parties are based in Europe, might not London or Hamburg be both a logistically easier and less resource-heavy location for the Arbitration? The language potential used in proceedings should also be borne in mind.

It is also likely that the vessel's P&I insurers will be interested in the dispute resolution clause, which potentially has an impact on them.

If you would like any further advice in relation to dispute resolution clauses, or the subject generally, please contact us at aberdeen@mackinnons.com



Martin Sinclair – Partner

Offshore wind farms: chart a new course by chartering?

The construction of offshore wind farms has caused much concern, not just to Donald Trump, but amongst many coastal communities who see it as a risk to the continuation of fishing activities, with the inevitable knock-on effect to their local economies, which are often vulnerable anyway. As of early 2013, a total of 25 wind farms, varying from 30 to 216 turbines in size, were either operational or being built in UK waters.

The fishing industry is understandably apprehensive that displacement from traditional fishing grounds shall result in increased competition, conflict and heightened fuel costs – not to mention the environmental consequences, such as altered behavioural patterns, which may ensue from wind farm development. For an industry already grappling with low profit margins, there is a real threat of business failure as some smaller vessels may not be capable of relocating to other fishing grounds and changing to other fishing methods as well as being constrained by the availability of capital, licenses and quota.

Although all of this will undoubtedly create challenges for the fishing industry, there may also be opportunities, particularly through vessel chartering. Developers may agree to hire local fishing vessels to help with survey work and monitor construction areas, drawing on their knowledge of the local waters. Further, there may be opportunities to take curious tourists out to observe the turbines close up. Many people do find them attractive!

There are three main categories of charter party, namely the bareboat (or demise) charter, the voyage charter and the time charter. Whereas a voyage charter involves the hire of a vessel for a particular voyage (or series of consecutive voyages), bareboat and time charters involve the hire of a vessel for a period of time. In the case of voyage and time charters the owners of the vessel are responsible for its operation and management, but how the owners employ the vessel during the charter is at the direction of the charterer. Under a bareboat or demise charter however, the charterer takes responsibility for the operation and management of the vessel during the charter, assuming the legal responsibilities of the owner, and in such circumstances the charterer is known as the disponent owner.

If you think you may be in a position to take advantage of chartering opportunities, whether in relation to wind farm developments or otherwise, for further advice please contact us at aberdeen@mackinnons.com



Angus Easton – Solicitor

Auto enrolment: how many are opting-out?

Auto-enrolment requires all employers to automatically enrol workers in a pension scheme once the employer has passed its staging date (a date fixed between 1st October 2012 and 1st February 2018, depending on the size of the employer's PAYE scheme as at 1st April 2012). Workers must be auto-enrolled if they meet certain criteria relating to age and earnings. They can choose to opt-out during the first month of auto-enrolment, which is known as the opt-out window.

To date, over 1,100 businesses have been required to comply with auto-enrolment and with the regime reaching its first anniversary, the government has published data relating to the number of workers exercising their right to opt-out during the opt-out window. The government sampled 50 employers ranging in size from 6,000 to 120,000. Of the workers automatically enrolled to a pension scheme, only 9% (41,440 out of 460,000 workers automatically enrolled) exercised their right to opt out, with higher rates of opt-out reported for workers aged 50 years or more, or in schemes where the worker contributions were higher than the minimum level required by law (currently 1%).

The Pensions Minister, Steve Webb, has declared this to be a positive indication that the government's pioneering scheme will be successful in "reprogramming" workers to save for their future now.

The Pensions Regulator has urged employers to start thinking about auto-enrolment well in advance of their staging date. Whilst the data demonstrates an increase in awareness of large employers about the new pension saving requirements, awareness amongst small to medium employers remained low.

If you would like any further advice regarding Auto-Enrolment please contact us at aberdeen@mackinnons.com



Katie Williams – Partner

New Appointments at Mackinnons

We are delighted to announce the assumption of **Ashleigh McConnell** as a Partner from 1st October 2013 in our **Private Client Department** of the firm.

Welcoming Ashleigh to the partnership, Pat Gray, Property and Private Client Partner, said, "This appointment is very much deserved. Ash has shown a tremendous work ethic throughout her time with us and has great empathy with clients."

In March this year, Ashleigh was integral in steering the firm to the winning place in the Private Client Team of the Year Award 2013 – a brilliant achievement for Mackinnons and one of which we are rightly proud."

We are also delighted to welcome to the **Employment Team, Nicola Gray** and **Fergus Dow** to the **Commercial Team. Kate Fisher** has joined the firm as a *Paralegal* supporting the **Dispute Resolution Team.**

Kim Harkness has been promoted to the role of *Legal Executive* within our **Property Department** and **Rae-Anne Marr** has been appointed as *Paralegal* to support our growing **Property and Private Client teams.** To assist our **Leasing Department, Kirsti Ward** has now been appointed *Leasing Executive.*



Stop Press!

Mackinnons Again Top-Ranked by Chambers UK



We are delighted to announce that the firm has once again been awarded top ranking for Shipping Law by Chambers UK, the well-respected independent publication, which each year assesses the leading players in the UK legal sector. We are also ranked highly by Chambers for our Health & Safety work.

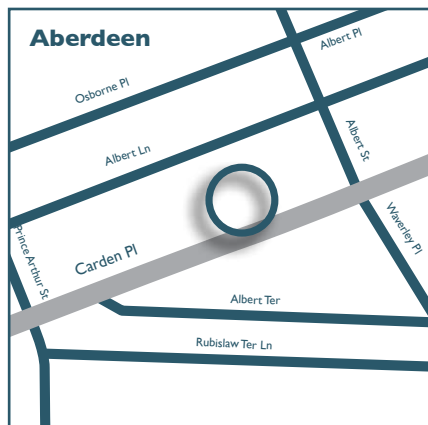
What is extremely pleasing is that although only 5 individual lawyers in Scotland are top-ranked in the Shipping category, 3 of the 5 are partners in Mackinnons. Keith MacRae is joined in the top bracket by Graham Jones and Bruce Craig. Bruce is also ranked highly in the Health & Safety category.



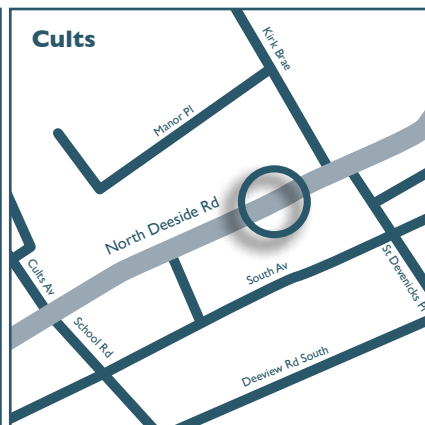
Since Mackinnons became members of the UK Chamber of Shipping in 2012 we have been pleased to be an active member of the Chamber, including Katie Williams taking part in the Employment Law Committee and Bruce Craig taking part in the Offshore Support Vessel Committee.

During the joint event Mackinnons sponsored with the Chamber in June, David Balston, Director Safety and Environment from the Chamber of Shipping, said, "Thank you very much indeed for the outstandingly positive contribution that Mackinnons has already made to the Chamber and its various committees."

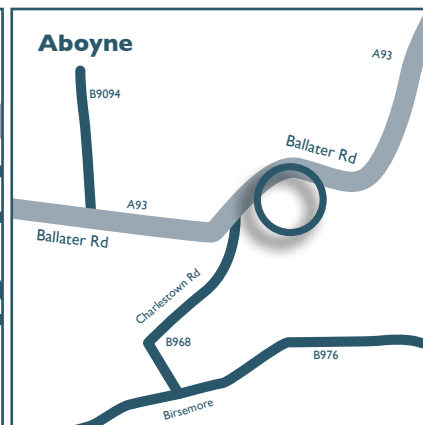
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