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COMPANIES FORM No. 410(Scot)

**Particulars of a charge created
by a company registered in Scotland**

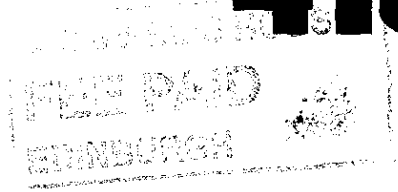
410

**A fee of £13 is payable to Companies House in
respect of each register entry for a mortgage or
charge**

CHFP025

*Please do not
write in this
margin*

Pursuant to section 410 of the Companies Act 1985



*Please complete
legibly, preferably
in black type, or
bold block lettering*

To the Registrar of Companies
(Address overleaf - Note 6)

For official use

Company number

[1418]

SC014456

Name of company

* Whyte and Mackay Limited

* insert full name
of company

Date of creation of the charge (note 1)

7 February 2005

Description of the instrument (if any) creating or evidencing the charge (note 1)

Standard Security

Amount secured by the charge

The Secured Obligations

(see Paper Apart for definition of "Secured Obligations")

Names and addresses of the persons entitled to the charge

The Governor and Company of the Bank of Scotland as Security Trustee for
the Secured Parties, The Mound, Edinburgh, EH1 1YZ

(see Paper Apart for definitions of "Security Trustee" & "Secured Parties")

Presentor's name address telephone
number and reference (if any);

McGrigors

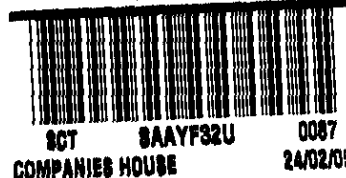
Princes Exchange
1 Earl Grey Street
Edinburgh
EH3 9AQ

0131 777 7000

For official use (10/03)

Charges Section

Post room



Short particulars of all the property charged.

Invergordon Distillery, Cottage Brae, Invergordon, IV18 0HP

Please do not
write in
this margin

Please complete
legibly, preferably
in black type, or
bold block lettering

Statement, in the case of a floating charge, as to any restrictions on power to grant further securities and any ranking provision (note 2)

N/A

Particulars as to commission, allowance or discount paid (see section 413(3))

None

A fee is payable
to Companies
House in respect
of each register
entry for a
mortgage or
charge.
(See Note 5)

Signed M. J. B.

Date 24.02.05

On behalf of ~~XXXXXXXX~~ [chargee] †

Notes

1. A description of the instrument e.g. "Standard Security" "Floating Charge" etc, should be given. For the date of creation of a charge see section 410(5) of the Act. (Examples - date of signing of an Instrument of Charge; date of recording/registration of a Standard Security; date of intimation of an Assignment.)

2. In the case of a floating charge a statement should be given of (1) the restrictions, if any, on the power of the company to grant further securities ranking in priority to, or pari passu with the floating charge; and/or (2) the provisions, if any, regulating the order in which the floating charge shall rank with any other subsisting or future floating charges or fixed securities over the property which is the subject of the floating charge or any part of it.

3. A certified copy of the instrument, if any, creating or evidencing the charge, together with this form with the prescribed particulars correctly completed must be delivered to the Registrar of Companies within 21 days after the date of the creation of the charge. In the case of a charge created out of the United Kingdom comprising property situated outside the U.K., within 21 days after the date on which the copy of the instrument creating it could, in due course of post, and if despatched with due diligence, have been received in the U.K. Certified copies of any other documents relevant to the charge should also be delivered.

4. A certified copy must be signed by or on behalf of the person giving the certification and where this is a body corporate it must be signed by an officer of that body.

5. A fee of £13 is payable to Companies House in respect of each register entry for a mortgage or charge. Cheques and Postal Orders are to be made payable to **Companies House**.

6. The address of the Registrar of Companies is: Companies House, 37 Castle Terrace, Edinburgh EH1 2EB
DX 235 Edinburgh or LP - 4 Edinburgh 2

† delete as
appropriate

Paper Apart

Whyte and Mackay Limited registered in Scotland with Company Number SC14456

Paper Apart to Form 410 in respect of a Standard Security granted in favour of The Governor and Company of the Bank of Scotland in its capacity as Security Trustee for the Secured Parties

"Account Bank" means Bank of Scotland solely in its capacity as account bank under the Senior Facility Agreement, its successors in title and each successor account bank appointed from time to time under the Senior Facility Agreement;

"Agent" means Bank of Scotland, solely in its capacity as agent under the Senior Facility Agreement, its successors in title and each successor agent appointed from time to time under the Senior Facility Agreement;

"Arranger" means Bank of Scotland solely in its capacity as arranger under the Senior Facility Agreement, its successors in title and each successor arranger appointed from time to time under the Senior Facility Agreement;

"Asset Finance Facility Documents" means:

- (a) the Asset Finance Documents (as defined in the Senior Facility Agreement); and
- (b) any replacement and/or additional asset finance agreement entered into with the consent of the Agent (such consent not required for any asset finance agreement which is entered into to replace any facility available under the Asset Finance Document withdrawn by Bank of Scotland) by an Obligor and an Asset Finance Facility Provider; *provided that* the face amount of any such replacement and/or additional agreements (when aggregated with the principal amount outstanding under the agreement referred to in paragraph (a)) shall not exceed £15,000,000 in principal aggregate amount at any time outstanding,

and **"Asset Finance Facility Document"** means any of them.

"Asset Finance Facility Providers" means:

- (a) The Governor and Company of the Bank of Scotland through the trading name Bank of Scotland Asset Finance, solely in its capacity as lender under the Asset Finance Facility Documents; and
- (b) any other bank or financial institution that provides an asset finance facility to any Obligor, which has entered into a Deed of Accession in accordance with the Intercreditor Agreement,

and **"Asset Finance Facility Provider"** means any of them.

"Asset Finance Obligations" means all obligations and liabilities (whether present or future, actual or contingent, as principal or surety and whether severally or jointly) of the Obligors (or any of them) to an Asset Finance Facility Provider under or arising out of or in connection with the Asset Finance Facility Documents (or any of them);

"Bank of Scotland" means The Governor and Company of the Bank of Scotland;

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in London and Edinburgh;

"Debenture" means each debenture dated on or after 1 February 2005 granted by an Obligor in favour of the Security Trustee;

"Deed of Accession" means:

- (a) in respect of an assignee or transferee of a Secured Party or a new Secured Party, a deed of accession in the form set out in Schedule 2 (*Secured Party Deed of Accession*) of the Intercreditor Agreement; and
- (b) in respect of any subsidiary of the Company, a deed of accession in the form set out in Schedule 1 (*Obligor Deed of Accession*) of the Intercreditor Agreement.

"Deed of Appointment" means a deed of appointment in the form set out in Schedule 3 (*Deed of Appointment*) of the Intercreditor Agreement;

"Discharge Date" means the date when:

- (a) no Obligor has any liability, actual or contingent, to any Secured Party under any Finance Document; and
- (b) no Secured Party has any liability, actual or contingent, under any Finance Document.

"Encumbrance" means any Security Interest (as defined in the Senior Facility Agreement);

"Enforcement Proceeds" means:

- (a) all receipts and recoveries by the Security Trustee (or by any other person which are properly paid over to the Security Trustee) on behalf of the Secured Parties or any of them:
 - (i) pursuant to, upon enforcement of, or in connection with, the Security;
 - (ii) without prejudice to paragraph (i) above, in respect of all representations, warranties, covenants, guarantees, indemnities and other contractual rights of the Security Trustee or any Secured Party made or granted in or pursuant to any Finance Document; and
- (b) all other moneys which are by the terms of the Finance Document to be applied in accordance with the Intercreditor Agreement in payment to one or more Secured Parties, including amounts to be paid to the Security Trustee under Clauses 4.3 (*Filing of Claims*), 4.4 (*Distributions*) and 8.6 (*Recoveries*) of the Intercreditor Agreement; and
- (c) the proceeds of any claim by any party to the Intercreditor Agreement against the providers of any of the Reports (as defined in the Senior Facility Agreement) arising out of any of such Reports or any omission or inaccuracy in such Reports,

but excluding, in each case, all such receipts, recoveries and moneys properly receivable by the Security Trustee for its own account;

"Excluded Recovery" means:

- (a) in respect of the Asset Finance Facility Provider, amounts received, recovered or realised by it or by the Security Trustee through the in-gathering or taking possession of or disposal of any assets financed pursuant to the Asset Finance Facility Documents; or
- (b) in respect of the Invoice Discounting Facility Provider, amounts received, recovered or realised by it or by the Security Trustee through the in-gathering or collection or disposal of any invoices which are subject to the Invoice Discounting Facility Documents;

"Finance Documents" means:

- (i) the Finance Documents referred to in the Senior Facility Agreement;
- (ii) the Finance Documents referred to in the Mezzanine Facility Agreement;
- (iii) the Working Capital Facility Agreements;
- (iv) the Asset Finance Facility Documents;
- (v) the Invoice Discounting Facility Documents;
- (vi) the Hedging Agreements;
- (vii) the Security Documents; and
- (viii) the Intercreditor Agreement.

"Fixed Charge" means each fixed charge dated on or after 1 February 2005 granted by an Obligor in favour of the Security Trustee;

"Floating Charge" means each floating charge dated on or after 1 February 2005 granted by an Obligor in favour of the Security Trustee;

"Hedging Agreements" means:

- (a) the agreement dated on or about 1 February 2005 in the form of the ISDA Master Agreement, Schedule and confirmation thereto entered into between the Company and/or the Principal Subsidiary and the Hedge Counterparty; and
- (b) any replacement or additional hedging agreement entered into by an Obligor and a Hedge Counterparty in accordance with the Senior Facility Agreement.

"Hedge Counterparty" means:

- (a) HBOS Treasury Services plc, solely in its capacity as a party to the Hedging Agreement and its successors in title; and
- (b) any other bank or financial institution that enters into a hedging agreement with an Obligor which has entered into a Deed of Accession in accordance with the Intercreditor Agreement.

"Hedging Obligations" means all obligations and liabilities (whether present or future, actual or contingent, as principal or surety and whether severally or jointly) of the Obligors (or any of them) to a Hedge Counterparty under or arising out of or in connection with the Hedging Agreements (or any of them);

"Intercreditor Agreement" means the agreement dated 1 February 2005 between Whyte And Mackay Group Limited, the Obligors, the Senior Lender, the Mezzanine Lenders, the Invoice Discounting Facility Provider, the Asset Finance Facility Provider, HBOS Treasury Services Plc, the Security Trustee and the Subordinated Lender;

"Intercompany Obligations" means all present and future liabilities (actual or contingent) payable or owing by any Obligor to any other Obligor under any loan or financial facility between them including under the Intra-Group Loan Agreement (as defined in the Senior Facility Agreement);

"Instructing Party" means:

- (a) at any time prior to the Senior Discharge Date, the Agent;
- (b) following the Senior Discharge Date, Asset Finance Facility Providers and Income Discounting Facility Providers each for such time as they are respectively entitled to the Asset Finance Obligations and Invoice Discounting Obligations until all such obligations are discharged in full;
- (c) thereafter, the Mezzanine Lenders.

"Invoice Discounting Facility Documents" means:

- (a) the Invoice Discounting Documents (as defined in the Senior Facility Agreement); and
- (b) any replacement and/or additional cashflow finance facility documentation entered into with the consent of the Agent (such consent not required for any cashflow finance documentation entered into to replace any facility available under the Invoice Discounting Documents which is withdrawn by Bank of Scotland) between an Obligor and an Invoice Discounting Facility Provider; *provided that* the face amount of any such replacement and/or additional agreements (when aggregated with the principal amount outstanding under the agreement referred to in paragraph (a)) shall not exceed £40,000,000 in principal aggregate amount at any time outstanding,

and **"Invoice Discounting Facility Document"** means any of them;

"Invoice Discounting Facility Providers" means:

- (a) The Governor and Company of the Bank of Scotland through the trading name Bank of Scotland Cashflow Finance, solely in its capacity as lender under the Invoice Discounting Facility Documents, its successors in title and each transferee or assignee of its rights and obligations under the Invoice Discounting Facility Documents that enters into a Deed of Accession in accordance with the Intercreditor Agreement; and
- (b) any other bank or financial institution that enters an agreement described in paragraph (b) of the definition above of Invoice Discounting Facility Documents

and enters into a Deed of Accession in accordance with the Intercreditor Agreement,

and **"Invoice Discounting Facility Provider"** means any of them;

"Invoice Discounting Obligations" means all obligations and liabilities (whether present or future, actual or contingent, as principal or surety and whether severally or jointly) of the Obligors to the Invoice Discounting Facility Providers under or arising out of or in connection with an Invoice Discounting Facility Document;

"Mezzanine Enforcement Event" means the service by the Mezzanine Lender of a notice under Clause 22.20 (*Acceleration*) of the Mezzanine Facility Agreement pursuant to an event of default under Clause 22 of the Mezzanine Facility Agreement;

"Mezzanine Facility Agreement" means the mezzanine facility agreement dated 15 October 2001 made between the Company, Meadfine Limited and Westdeutsche Landesbank Girozentrale, assigned by Meadfine Limited to Investec Bank (Channel Islands) Limited pursuant to an assignment dated March 2002 and as amended and restated on or about the 1 February 2005;

"Mezzanine Lenders" means Investec Bank (Channel Islands) Limited, solely in its capacity as a mezzanine lender under the Mezzanine Facility Agreement, its successors in title and each transferee or assignee of its rights under the Mezzanine Facility Agreement that enters into a Deed of Accession in accordance with the Intercreditor Agreement, and **"Mezzanine Lender"** means any of them;

"Mezzanine Obligations" means all obligations and liabilities (whether present or future, actual or contingent, as principal or surety and whether severally or jointly) of the Obligors (or any of them) to the Mezzanine Lenders under or arising out of or in connection with the Mezzanine Facility Agreement and related Finance Documents (as defined in the Mezzanine Facility Agreement);

"Obligors" means the Company, each company listed in Schedule 4 (*Obligors*) and each other Subsidiary of the Company that sign a Deed of Accession in the form of Schedule 1 (*Obligor Deed of Accession*) of the Intercreditor Agreement and **"Obligor"** means any of them;

"Party" means a party to the Intercreditor Agreement;

"Permitted Debt Payments" means payments permitted to be made in accordance with the Finance Documents but up until the Senior Discharge Date excluding all payments under the Mezzanine Facility Agreement, other than payments made in compliance with terms of Clause 3 (*Permitted Payments to Mezzanine Lenders*) of the Intercreditor Agreement;

"Priority Lender" means, collectively, the Senior Lenders, the Hedge Counterparties and the Working Capital Banks;

"Priority Obligations" means, collectively, the Senior Obligations, the Hedging Obligations and the Working Capital Obligations;

"Receiver" means an administrative receiver, receiver and manager or other receiver;

"Recovery" means any amount received, recovered or realised by a Secured Party at any time after the acceleration of any of the Secured Obligations or enforcement of Security in

or towards the discharge or satisfaction of the Secured Obligations or any part of them, whether as a result of the enforcement of the Security, the exercise of any right of set-off or combination of accounts, the making of any claim against the providers of any of the Reports, or otherwise, except amounts received pursuant to and applied in accordance with the provisions of Clause 8 (*Application of Enforcement Proceeds*) of the Intercreditor Agreement;

"Secured Obligations" means the Senior Obligations, the Working Capital Obligations, the Hedging Obligations, the Asset Finance Obligations, the Invoice Discounting Obligations and the Mezzanine Obligations, or any of them;

"Secured Parties" means the Agent, the Security Trustee, the Senior Lenders, the Account Bank, the Mezzanine Lenders, the Working Capital Banks, the Invoice Discounting Facility Providers, the Hedge Counterparties and the Asset Finance Facility Providers and **"Secured Party"** means any of them;

"Security" means the Encumbrances and guarantees created by the Security Documents;

"Security Documents" means:

- (i) each Floating Charge;
- (ii) each Debenture;
- (iii) each Share Pledge;
- (iv) each Standard Security;
- (v) each Stock Pledge;
- (vi) each Fixed Charge;
- (vii) the Intercreditor Agreement; and
- (viii) all other Encumbrances over the assets of Obligors securing amounts outstanding under the Finance Documents.

"Security Rights" means:

- (a) the Encumbrances from time to time constituted by or pursuant to, or evidenced by, the Security Documents;
- (b) all representations, warranties, covenants, guarantees, indemnities and other contractual rights of the Security Trustee or any Secured Party made or granted in or pursuant to any Finance Document;
- (c) all rights vested by law in the Security Trustee by virtue of its so acting in relation to any Finance Documents; and
- (d) all rights to make demands, bring proceedings or take any other action in respect of any of the documents, rights and interests referred to in (a), (b) and (c) above,

except any of the same given solely in favour of the Security Trustee for its own benefit;

"Security Trustee" means the Bank of Scotland, solely in its capacity as security trustee under the Finance Documents, its successors in title and each successor security trustee appointed from time to time under the Intercreditor Agreement;

"Senior Discharge Date" means the first date following drawdown of the Term Loan (as defined in the Senior Facility Agreement) when no Obligor has any liability, actual or contingent to any Senior Lender, Hedge Counterparty or Working Capital Bank under any Finance Document (as defined in the Senior Facility Agreement);

"Senior Enforcement Event" means the delivery to the Company by the Agent of a notice under Clause 27.20 (*Acceleration*) of the Senior Facility Agreement or, following the Senior Discharge Date, an event of default under the Asset Finance Facility Documents or the Invoice Discounting Facility Documents;

"Senior Facility Agreement" means the facilities agreement dated on or about 1 February 2005 among *inter alios* the Company, Bank of Scotland as Arranger, Agent, Security Trustee and Account Bank and the Senior Lenders;

"Senior Lenders" means Bank of Scotland, solely in its capacity as lender under the Senior Facility Agreement, its successors in title and each transferee or assignee of its rights and obligations under the Senior Facility Agreement that enters into a Deed of Accession in accordance with the Intercreditor Agreement, and **"Senior Lender"** means any of them;

"Senior Obligations" means all obligations and liabilities (whether present or future, actual or contingent, as principal or surety and whether severally or jointly) of the Obligors (or any of them) to the Senior Lenders, the Agent, the Arranger, the Account Bank and the Security Trustee under or arising out of or in connection with the Senior Facility Agreement or any related Finance Document (as defined in the Senior Facility Agreement);

"Share Pledge" means each share pledge granted by an Obligor in favour of the Security Trustee;

"Standard Security" means each standard security granted by an Obligor in favour of the Security Trustee;

"Stock Pledge" means any pledge and assignation of consignments of whisky stocks dated on or about 1 February 2005 granted by an Obligor in favour of the Security Trustee and each supplemental or further pledge by an Obligor in favour of the Security Trustee and each supplemental or further pledge and assignation of consignments of whisky stocks granted pursuant thereto;

"Subordinated Obligations" means all obligations and liabilities (whether present or future, actual or contingent, as principal or surety and whether severally or jointly) of the Obligors (or any of them) to the Subordinated Lender under or arising out of or in connection with the Subordinated Loan;

"Subordinated Lender" means Summerset, in its capacity as provider of the Subordinated Loan;

"Subordinated Loan" means the £15,500,000 unsecured subordinated loan by Summerset to the Company forming part of the facilities made available to the Company pursuant to the facility agreement dated 15 October 2001 between WestLB as Arranger Facility Agent and Security Trustee and the Company transferred to Summerset on or about 1 February 2005 pursuant to a transfer certificate between WestLB and Summerset;

"Subsidiary" has the meaning given to it in the Senior Facility Agreement;

"Summerset" means Summerset Overseas Limited, a company incorporated in the British Virgin Islands (registered number 625712) and having its registered office at Palm Grove House, PO Box 438, Road Town, Tortola, British Virgin Islands;

"Third Party Security" means each of the following cash deposits and pledges granted in favour of the Mezzanine Lender:-

Plane Investments Limited – Cash Deposit £7,600,000 subject to pledge under a Security Agreement executed on 18 February 2002;

Monolith Assets Limited – Cash Deposit £1,700,000 subject to pledge under a Security Agreement executed on 18 February 2002;

Riverbank Limited as Trustee of The Jasmine Trust – Cash Deposit £5,700,000 subject to pledge under a Security Agreement executed on 18 February 2002;

Genette International Holdings Limited – Cash Deposit £2,500,000 subject to pledge under a Security Agreement executed on 18 February 2002; and

Chadlyn Limited – Cash Deposit £2,500,000 subject to pledge under a Security Agreement undated;

"Trust Property" means the Security Rights and the Enforcement Proceeds;

"WestLB" means Westdeutsche Landesbank Girozentrale, London Branch;

"Working Capital Banks" means:

- (e) Bank of Scotland in its capacity as lender under the Working Capital Facility Agreement, its successors in title and each transferee or assignee of its rights and obligations under the Working Capital Facility Agreements that enters into a Deed of Accession in accordance with the Intercreditor Agreement; and
- (f) any other bank or financial institution that enters into an agreement described in paragraph (b) of the definition below of Working Capital Facility Agreements and enters into a Deed of Accession in accordance with the Intercreditor Agreement;

and **"Working Capital Bank"** means any of them;

"Working Capital Facility Agreements" means:

- (g) the Working Capital Documents (as defined in the Senior Facility Agreement); and
- (h) any replacement and/or additional working capital facility agreement entered into with the consent of the Agent (such consent not required for any working capital facility agreement entered into to replace any facility made available under the Working Capital Documents which is withdrawn by Bank of Scotland) between an Obligor and a bank or financial institution provided that the aggregate amount of any such replacement and/or additional agreements (when aggregated with the amount outstanding under the agreement referred to in paragraph (a)) shall not exceed £25,000,000 in principal aggregate amount at any time outstanding.

"Working Capital Obligations" means all obligations and liabilities (whether present or future, actual or contingent, as principal or surety and whether severally or jointly) of the Obligors (or any of them) to the Working Capital Banks from time to time.

myas

FILE COPY



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number 14456

I hereby certify that a charge created by

WHYTE AND MACKAY LIMITED

on 7 FEBRUARY 2005

for securing ALL SUMS DUE, OR TO BECOME DUE

in favour of

THE GOVERNOR AND COMPANY OF THE BANK OF SCOTLAND AS
SECURITY TRUSTEE

was delivered pursuant to section 410 of the Companies Act, 1985,
on 24 FEBRUARY 2005 given at Companies House, Edinburgh
28 FEBRUARY 2005



C O M P A N I E S H O U S E



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES