

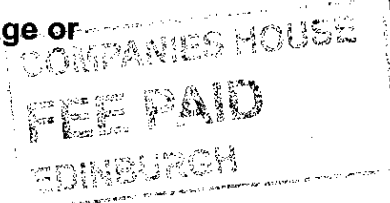
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COMPANIES FORM No. 410(Scot)

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

1113

SC022718

Name of company

* Charles Mackinlay & Company Limited (the "Chargor")

* insert full name
of company

Date of creation of the charge (note 1)

1 February 2005

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

Fixed Charge and Assignment (the "Charge")

Amount secured by the charge

All or any Secured Obligations and all or any monies, liabilities and
obligations due by the Chargor pursuant to the Charge.

See Paper Apart 1 for definitions.

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 "Security Trustee")
The Mound
Edinburgh, EH1 1YZ

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

McGrigors (C. MacDonald)

Princes Exchange
1 Earl Grey Street
Edinburgh
EH3 9AQ

0131 777 7000

EI539723

For official use (10/03)

Charges Section



Short particulars of all the property charged.

See Paper Apart 2

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))

N/A

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

Signed 

Date 11/02/05

On behalf of ~~XXXXXX~~ [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 1
CHARLES MACKINLAY & COMPANY LIMITED
Registered in Scotland with Company Number SC022718
Paper Apart to Form 410 in respect of a fixed charge and assignment 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;

"Ancillary Rights " means the benefit of all covenants, leases, tenancies, agreements, licences, rights, conditions or encumbrances relating to the Mortgaged Properties and all monies paid or payable thereunder;

"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,

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;

"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 Parent, a deed of accession in the form set out in schedule 1 (*Obligor Deed of Accession*) of the Intercreditor Agreement;

"Hedging Agreements" means:

- (a) the agreement dated on or about the date of the Intercreditor Agreement 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;

"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);

"Insurances" means all policies of contracts of insurance or assurance at the date of the Charge or thereafter effected by the Chargor or on the Chargor's behalf or in which it may have an interest;

"Intellectual Property Rights" has the meaning given to "Intellectual Property" in the Senior Facilities Agreement;

"Intercreditor Agreement" means the Intercreditor agreement dated 1 February 2005 between, *inter alios*, the Parent, Agent, Senior Lender, Account Bank, Arranger, Working Capital Bank, Hedge Counterparties, Invoice Discounting Facility Providers, Mezzanine Lenders and Security Trustee;

"Investments" means all shares, stocks, bonds, debentures or other securities and investments of any kind (including the Specified Investments);

"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; 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,

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 date of the Intercreditor Agreement;

"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, 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);

"Mortgaged Properties" means all freehold or leasehold properties from time to time forming part of the Security Assets and includes the Specified Properties;

"Obligors" means the Parent, each company listed in schedule 4 (*Obligors*) of the Intercreditor Agreement (including the Chargor) and each other Subsidiary of the Parent that signs a Deed of Accession in the form of schedule 1 (*Obligor Deed of Accession*) of the Intercreditor Agreement and **"Obligor"** means any of them;

"Parent" means Whyte and Mackay Group Limited, a company incorporated in Scotland with the registered number SC221954 and having its registered office at Dalmore House, 310 St Vincent Street, Glasgow, G2 5RG;

"Principal Subsidiary" means Whyte and Mackay Limited, a company incorporated in Scotland with the registered number SC014456 and having its registered office at Dalmore House, 310 St Vincent Street, Glasgow, G2 5RG;

"Receivables" means all book and other debt and monetary claims at the date of the Charge or any time thereafter due or owing to the Chargor;

"Related Rights" means in relation to any shares, stocks, bonds, debentures or other securities or investments of any kind:

- (a) all dividends; and
- (b) all rights, property and distributions of a capital nature paid, payable, offered, issued or otherwise accruing by way of bonus, rights, redemption, substitution, preference, warrant, options or otherwise in respect thereof;

"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 and all or any monies, liabilities or obligations due by the Chargor under or pursuant to the Charge;

"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 Assets" means all or any part of or interest in the undertaking property, rights and assets of the Chargor which at the date of the Charge or any time thereafter are or are expressed to be the subject of any Security Interest created or purported to be created pursuant to the Charge;

"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);

"Security Interest" means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

"Senior Enforcement Event" means the delivery to the Parent 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 1 February 2005 among *inter alios* the Company, 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, 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);

"Specified Intellectual Property Rights" means the Intellectual Property Rights specified in schedule 3 of the Charge;

"Specified Insurances" means the Insurances specified in part 1 of schedule 2 to the Charge;

"Specified Investments" means the Investments specified in schedule 4 of the Charge;

"Specified Properties" means the freehold or leasehold properties specified in schedule 1 of the Charge;

"Subsidiary" means a subsidiary undertaking within the meaning of Section 258 of the Companies Act 1985;

"Working Capital Banks" means:

- (a) 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; and
- (b) 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,

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

"Working Capital Facility Agreements" means:

- (a) the Working Capital Documents (as defined in the Senior Facility Agreement); and
- (b) 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; and

"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.

Paper Apart 2
CHARLES MACKINLAY & COMPANY LIMITED
Registered in Scotland with Company Number SC022718
Paper Apart to Form 410 in respect of a fixed charge and assignment granted in favour of The
Bank of Scotland in its capacity as Security Trustee for the Secured Parties

Mortgages and charges

Land

- (a) By way of first legal mortgage, all estates and interests in the Specified Properties and all other freehold or leasehold properties at the date of the Charge or any time thereafter belonging to the Chargor together with the premises and the fixtures on and in them, and the Ancillary Rights pertaining to them;
- (b) By way of first legal charge (to the extent not effectively mortgaged under paragraph (a) above, or any other present or future mortgage in favour of the Security Trustee), all estates and interests in all freehold or leasehold properties at the date of the Charge or any time thereafter belonging to the Chargor together with the premises and the fixtures and fittings on and in them and the Ancillary Rights pertaining to them.

Plant, machinery and chattels

By way of first fixed charge, all plant, machinery and other chattels from the date of the Charge or any time thereafter owned by the Chargor, and the Chargor's interest in all plant, machinery and other chattels held by the Chargor under any lease, licence, hire or rental contract or other arrangement (excluding any forming part of the Chargor's stock in trade or work in progress) together with the benefit of all hiring, leasing or rental contracts in respect of any such plant, machinery or chattels hired, leased or rented by the Chargor to any other person, and any guarantees, indemnities and Security Interests for the performance of such person's obligations at the date of the Charge or any time thereafter held or enjoyed by the Chargor in relation thereto.

Rental Income

By way of first fixed charge (except to the extent the subject of a valid fixed Security Interest under any other provision of the Charge), all rental income together with the benefit of all guarantees, indemnities, Security Interests and other rights of any nature at the date of the Charge or any time thereafter held or enjoyed by the Chargor in relation thereto.

Intellectual Property Rights

By way of first fixed charge, the Specified Intellectual Property Rights, and all other Intellectual Property Rights at the date of the Charge or any time thereafter owned by the Chargor (solely or with others), and the Chargor's interest in all Intellectual Property Rights at the date of the Charge or any time thereafter held or used by the Chargor (solely or with others) under licence, sub licence, franchise or otherwise in any way together with the benefit of all licences, sub licences, franchises and other agreements or arrangements of any nature entered into by the Chargor in relation to the use by the Chargor or third parties of such Intellectual Property Rights.

Investments

By way of first fixed charge all Investments at the date of the Charge or any time thereafter owned by the Chargor or held by any nominee on the Chargor's behalf, and the Related Rights pertaining to them.

Credit balances

By way of first fixed charge, all monies, whether principal or interest, accrued or accruing, at the date of the Charge or any time thereafter deposited in or otherwise standing to the credit of each bank account of the Chargor and any other present or future account of the Chargor with the Security Trustee or any other bank, financial institution or other person, the debts thereby represented, and all other rights and benefits in connection therewith.

Receivables

By way of first fixed charge (except to the extent the subject of a valid fixed Security Interest under any other provision of the Charge), all Receivables together with the benefit of all guarantees, indemnities, Security Interests and other rights of any nature at the date of the Charge or any time thereafter held or enjoyed by the Charge in relation thereto.

Group loan capital

By way of first fixed charge, all loan capital indebtedness at the date of the Charge or any time thereafter due or owing to the Chargor by any company which is at the date of the Charge or may at any time thereafter be or become a member of the Group.

Miscellaneous

By way of first fixed charge:

- (a) any beneficial interest, claim or entitlement the Chargor may have in any pension fund;
- (b) the benefit of all statutory or regulatory licences, permissions, consents or authorisations held by the Chargor in connection with the Chargor's business or the use of any Security Asset and any right to payment of compensation thereunder;
- (c) all sums, realised or recovered by any liquidator or administrator of the Chargor pursuant to Part VI of the Insolvency Act 1986;
- (d) the Chargor's goodwill; and
- (e) the Chargor's uncalled capital.

Assignments**Insurances**

By way of absolute assignment by way of security, the benefit of and the Chargor's whole present and future rights and claims under or in respect of, the Specified Insurances and all other Insurances including without limitation, all rights to submit, negotiate and settle claims, and all monies at the date of the Charge or thereafter payable thereunder, including return of premiums provided that the Chargor may exercise such right up until the occurrence of a Senior Enforcement Event or Mezzanine Enforcement Event (in each case which is continuing).

SCHEDULE 2

Part 1: The Specified Insurances

INSURER	POLICY NUMBER	COVER
Allianz Cornhill & others	FJ11381739	Property damage insurance
Allianz Cornhill & others	FJ11381840	Business interruption insurance
QBE Insurance	ELY108813122	Employers liability insurance
DA Constable	A4022586	Excess Employers liability insurance
Chubb Insurance Company of Europe	79219244	Public/products liability insurance
DA Constable	A4022584	Excess Public/products liability insurance
Allianz Cornhill	BV11329924/10	Motor fleet insurance
Royal and Sun Alliance	CO69893L	Marine and inland transit insurance
AON Protect	2003/AONP/GW/000024	Business travel insurance
AON Protect	2003/AONP/GW/000024	Personal accident insurance
Chubb	81894301	Directors and officers liability insurance
Chubb	81894302A	Pension trustee liability
Pia Nassau (via AON Global Risks)	R04PR2012300	Product contamination insurance

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CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number 22718

I hereby certify that a charge created by

CHARLES MACKINLAY & COMPANY LIMITED

on 1 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 11 FEBRUARY 2005 given at Companies House, Edinburgh
16 FEBRUARY 2005



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



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES