

SHIPPING AND ENERGY

2024 YEAR IN REVIEW
LONDON OFFICE NEWSLETTER DIGEST

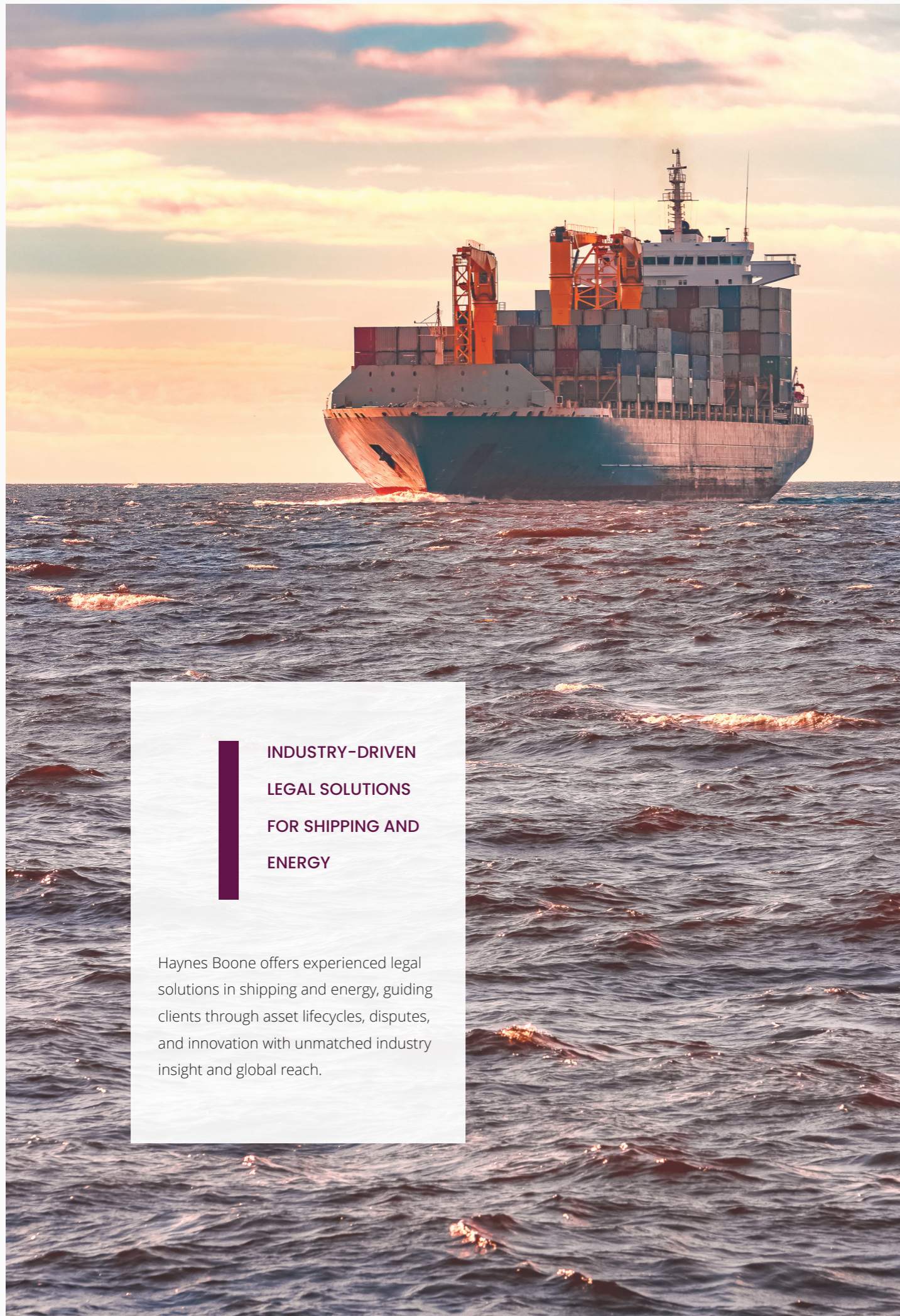


Summary

The Shipping and Energy: Year in Review 2024 from Haynes Boone's London Office highlights key insights, publications, interviews, and updates across shipping, energy, dispute resolution, and AI, reflecting a year of thought leadership and industry engagement.

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**INDUSTRY-DRIVEN
LEGAL SOLUTIONS
FOR SHIPPING AND
ENERGY**

Haynes Boone offers experienced legal solutions in shipping and energy, guiding clients through asset lifecycles, disputes, and innovation with unmatched industry insight and global reach.

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INTRODUCTION BY FIONA CAIN

Welcome to the Shipping and Energy: Year in Review 2024 from the London Office of Haynes Boone.

As the editor of our quarterly Shipping and Energy Newsletter, I am excited to bring together the alerts, articles, publications, podcasts and videos that have featured in the newsletter throughout 2024. Once again, there is a fantastic range of interesting pieces. Like the newsletter, this publication is separated into five main sections covering shipping, offshore energy, renewable energy, dispute resolution and artificial intelligence. Each of these sections is introduced by members of the team, who reflect on the content in that section and provide you with their highlights from 2024.

My highlights include the interviews we conducted including those with Simon Curtis, the author of *The Law of Shipbuilding Contracts* and Deputy Secretary General Stinne Taiger Ivø. I am also pleased that our articles have been published in a wide variety of industry and legal publications including *Global Hydrogen Review*, *Mealey's International Arbitration Report* and the *Solicitors Journal*, and our lawyers have been quoted in mainstream publications such as the *Financial Times*, and on the BBC.

2024 also saw the London office launch its LinkedIn page. Following this page will provide you with news from the London office including our other practice areas of corporate, debt capital markets, finance, insolvency, investment management, project finance and real estate. Our alerts and articles also appear on our page. Follow the page here.

In 2024, we continued to deliver talks on a variety of topics related to shipbuilding, ship conversion, ship sale and purchase, offshore energy, renewable energy and dispute resolution.

I have included some examples of the talks that we have given recently here. If any of these are of interest to your company, please email: shippingenergynewsletter@haynesboone.com.

Finally, I hope you enjoy reading our Year in Review and have appreciated receiving our newsletters this year. If you have any colleagues who would be interested in this content, please forward it to them and ask them to subscribe. If you are reading our Year in Review for the first time and are not a subscriber to our quarterly newsletter, there are details of how to subscribe on page 57 or you can email us at shippingenergynewsletter@haynesboone.com.

Happy reading,



FIONA CAIN
Editor and Counsel

TALKS



During the year, we have presented talks on a wide variety of topics related to shipbuilding, ship conversion, ship sale and purchase, offshore energy, renewable energy and dispute resolution. We provide some examples of the talks that we have given recently below. If any of these talks are of interest to your company, please email: shippingenergynewsletter@haynesboone.com.

Contract Negotiation and Interpretation

These sessions are designed to provide you with the knowledge and strategies to handle contractual negotiations with confidence. This year, we presented on topics including modern contract interpretation, the use of letters of intent, and the basics of contract law. We also tackled complex issues like assigning and novating contracts, limiting liability, understanding consequential loss, and navigating exhaustive remedies.

Marine Construction and Shipping

These talks are designed to assist you with navigating the complexities of marine construction and shipping. They include an introduction to shipbuilding contracts and an English case law update on shipbuilding contracts, delivered by a co-author of *The Law of Shipbuilding Contracts*. We presented on the key differences between shipbuilding and ship conversion projects, on an overview of vessel and offshore asset sale and purchase, and on the challenges buyers face in a rising market when negotiating shipbuilding contracts.

Offshore Energy

Our talks on offshore energy include offshore drilling and offshore wind and are designed to provide you with the knowledge to navigate the complexities of these industries. This past year, we covered key topics such as reviewing drilling contracts under English law, market recovery, knock-for-knock indemnities, and limiting liability. We also delved into contract drafting principles and key English law cases. For offshore wind, we explored the opportunities and challenges in this rapidly developing sector, focusing on unique contractual issues and risk mitigation strategies. These sessions provide practical insights to help you stay ahead in developing offshore energy landscape.

Dispute Resolution

Our arbitration and litigation talks are designed to help you understand and prepare for different forms of dispute resolution. In 2024, we covered key strategies for handling large-scale litigation and arbitration, provided practical insights into international commercial arbitration, and presented the specifics of arbitrating under the rules of key institutions and other arbitration forums.



SHIPPING DIGEST 2024

Introduction by *Andreas Silcher*



In 2024 we continued to support new and existing clients with a wide range of shipbuilding and offshore construction and conversion projects, chartering and operational matters and with the acquisition and disposal of diverse maritime assets. 2025 looks set to be another busy year for the team given the strong shipbuilding market and the need for owners to upgrade their fleets and implement greener technologies.

2024 saw the signing of the EPC contract on which London Office Managing Partner **Will Cecil**, Partner **Andreas Silcher** and Counsel **Mette Duffy** advised Golar LNG in respect of its US\$2.2 billion MK II floating liquefied natural gas conversion project for a market-leading FLNG vessel, expected to be delivered in Q4 2027 with an annual liquefaction capacity of 3.5 million tons of LNG. Given its significance for the FLNG sector, this has been a particularly interesting project for the Haynes Boone team. You can read more about the transaction [here](#).

Looking at industry standard forms, BIMCO launched SHIPMAN 2024, its standard form ship management agreement which may include crew, technical and commercial management as well as insurance arrangements. As one of the most widely used ship management agreements in the industry, the latest edition of SHIPMAN was highly anticipated. Further detail about the features of SHIPMAN 2024 can be found [here](#).

Building on the success of the Law of Shipbuilding Contracts, the leading practitioner's text co-authored by the team's **Simon Curtis**, the shipping team continues to contribute to **Lexology Panoramic: Shipbuilding 2024**. The chapter, answering key questions on shipbuilding contracts governed by the laws of England and Wales, has been updated this year to include recent case law on guarantees, penalty clauses, alternative dispute resolution (including mediation) and sanctions as well as developments with alternative fuels, autonomous vessels and the UK's shipbuilding credit guarantee scheme. **Simon Curtis** recently sat down with **Kayley Rousell** for an interesting Q & A session during which they discussed Simon's illustrious career, his book, starting his own law firm and more. The transcript of that interview is linked [here](#).

2024 was a year of continued development within the autonomous vessel sector. The IMO approved a new roadmap earlier this year addressing legal issues related to maritime autonomous surface ships ("MASS") and revised the roadmap in relation to the impact of MASS on the Convention on Facilitation of International Maritime Traffic, which you can read about [here](#). A new edition of the Workboat Code was also published and addresses remotely operated unmanned vessels ("ROUVs") operating as workboats for the first time.

Finally, we were delighted this year to announce the promotion of **Mette Duffy** to counsel and to welcome **Kayley Rousell** to the team as a newly qualified solicitor.



ANDREAS SILCHER
Partner

SHIPPING ALERTS AND ARTICLES



SIMON CURTIS
Senior Counsel



KAYLEY ROUSELL
Associate

[In Conversation with Simon Curtis - The Law of Shipbuilding Contracts and Beyond](#)

By Kayley Rousell and Simon Curtis

September 24, 2024

It's 11 am on an unseasonably crisp September morning in Holborn, London. It is just over a week since I qualified as a solicitor, marking two years of training across some of the key practice areas in the London office (Dispute Resolution, Energy and Shipping Transactions and Finance).

I have qualified into the Energy and Shipping Transactions team where I split my practice broadly between advising funders and sponsors in the financing, development, acquisition and disposal of energy and infrastructure projects and advising clients on contracts and other project documentation for high-value complex projects in the oil and gas, shipbuilding, offshore construction, drilling, floating production (FPSO and FLNG) and renewables sectors.

Sitting down to chat with Simon Curtis, Senior Counsel in the firm, I reflect on his impressive career across the field of maritime law spanning several global law firms, authoring *The Law of Shipbuilding Contracts* (the leading text on shipbuilding and marine construction) starting and building his own law firm, which merged with Haynes Boone eight years ago and creating the team that I have now joined.

[Read more here](#)

[Guidance from the Singaporean Courts on What a Ship Is: "I Cannot Say Why It Was a Ship, but I Knew What It Was When I Saw It."](#)

By Charlotte Mullis and Fiona Cain and Teena Grewal in *Ship Management International*

February 23, 2024

What does, or does not, make a floating craft a ship has long been a question which has plagued the minds of maritime related industries. The implications of the classification of a floating craft as a ship can be significant. If a floating craft is classified as a ship or vessel, then it will also be subject to maritime laws and regulations, which cover matters such as ship registration, mortgages, limitation of liability, ship arrest and collision liability.

This question is important also for the offshore oil and gas industry when considering commercial craft, such as jack up rigs and floating storage regasification units: if they are identified purely as an offshore installation, then different regulations apply.

[Read more here](#)



[Ship Sale and Purchase: Deposits Not Lodged, a Debt or Damages?](#)

By Fiona Cain and Milad Amani

April 12, 2024

The 2012 Norwegian Saleform (the "NSF 2012") continues to form the contractual basis of the majority of vessel sale and purchase transactions (despite the introduction of SHIPSALE 2022).

Clause 2 of the NSF 2012 requires the buyer to lodge a deposit in an interest-bearing account with the deposit holder "as security for the correct fulfillment" of the agreement. The deposit, which will be 10% of the purchase price unless otherwise stated, must be lodged within 3 banking days of the agreement being signed and the deposit holder (which if not specified by the parties, will be the seller's bank) confirming that the account has been opened.

[Read more here](#)

[SHIPMAN 2024 – BIMCO's New Standard Form Ship Management Agreement](#)

By Fiona Cain

May 08, 2024

BIMCO has launched SHIPMAN 2024, a standard form ship management agreement that may include crew, technical and commercial management as well as insurance agreements in respect of a ship.

As one of the most widely used ship management agreements in the shipping industry, the latest edition of SHIPMAN has been highly anticipated. First published in 1988, with updates in 1998 and 2009, changes in ship management practices along with the need to include a number of freestanding BIMCO clauses as riders justified an overall review of the SHIPMAN agreement.

[Read more here](#)



[Don't Let Ship Sale Be a Vessel for Non-Compliance – UK Government Issues Guidance on Russian Sanctions in Relation to Sales of Second-Hand Vessels to Third Countries](#)

By Fiona Cain

June 14, 2024

A notice to exporters (“NTE 2024/11”) titled “Russia sanctions – Sales of oil tankers to third countries” was published by the Export Control Joint Unit (“ECJU”) of the UK Government Department for Business and Trade on the May 21, 2024. NTE 2024/11 includes a [guidance note](#) with the same title (the “Guidance”).

The Guidance focusses on the early identification and prevention of Russian sanctions evasion for those in the UK engaged or involved in the sale and brokering of second-hand vessels (not just oil tankers) to third countries.

[Read more here](#)

[Ship Sale and Purchase: A Buyer's Right to Damages](#)

By Andreas Silcher

September 17, 2024

The recent English High Court decision of *Orion Shipping v Great Asia Maritime* concerned an appeal under section 69 of the Arbitration Act 1996 from a Tribunal's Partial Final Award. This case gives important guidance as to the type of damages a buyer of a ship can claim if it terminates the contract where the seller has failed to give notice of readiness by the cancelling date. The underlying dispute related to the Buyer (Great Asia Maritime)'s cancellation of a memorandum of agreement (MOA), concluded on June 4, 2021, for the sale of a Capesize bulk carrier, known as the MV “LILA LISBON” (the “Vessel”).

[Read more here](#)

[Deposits, Conditions Precedent and the Doctrine of Deemed Fulfilment](#)

By Fiona Cain and Milad Amani in *Solicitors Journal*

August 30, 2024

The Court of Appeal's judgment has confirmed that the principle in *Mackay v Dick* (despite being a Scottish case) and the doctrine of deemed fulfilment apply under English law, and that this is consistent with the legal maxim that contracting parties do not intend for a party to be able to benefit from its own breach.

[Read more here](#)

[Opportunities and Risks: Financing Shipping in Mexico's Oil and Gas Market](#)

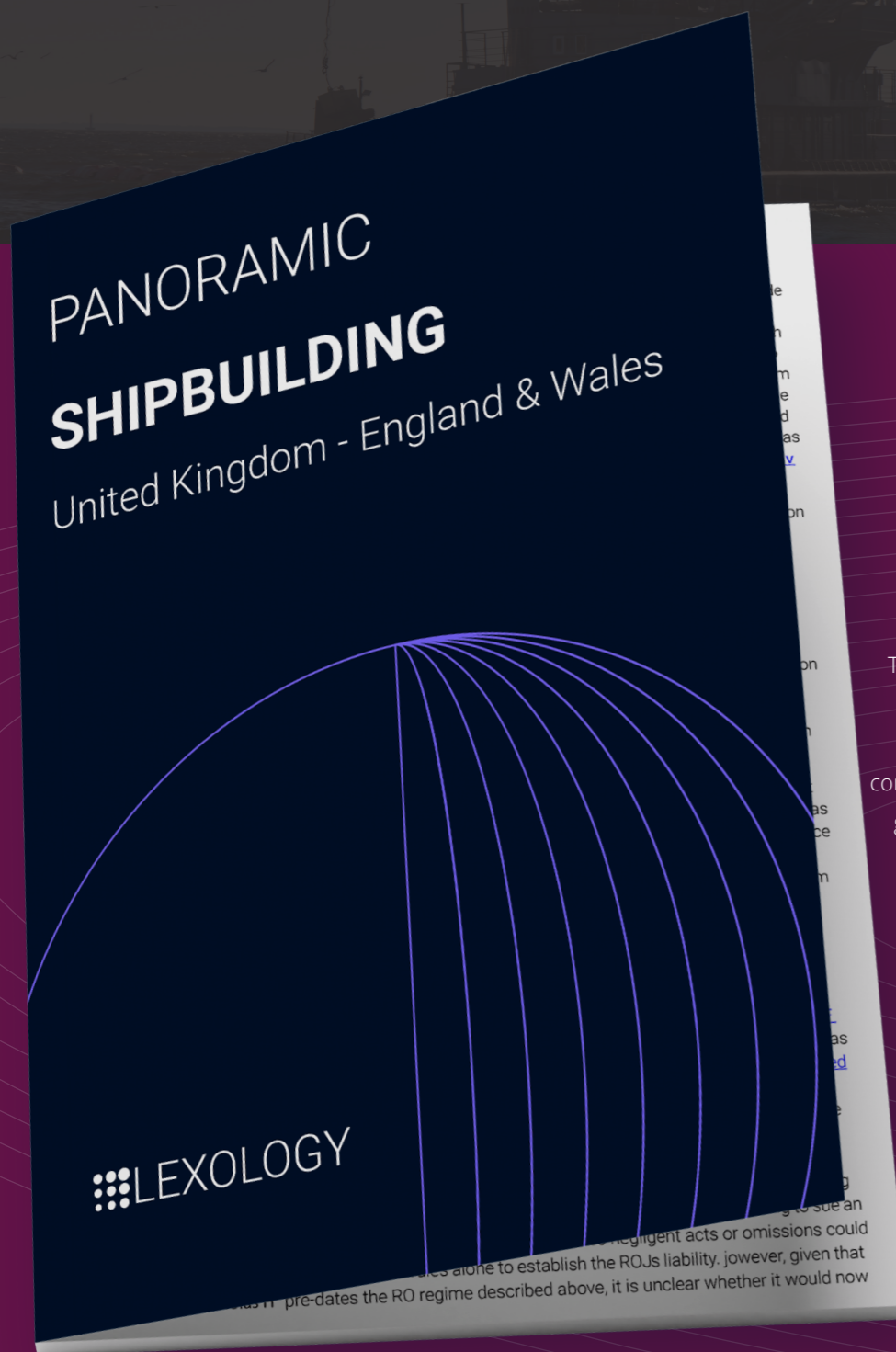
By Eduardo Corzo

September 18, 2024

The shipping industry in Mexico continues to be active in the offshore oil and gas sector. One of the main components of Mexico's economy is the production and trade of hydrocarbons, in which *Petroleos Mexicanos* (Pemex) – has a high share. Shipping companies see in Mexico an opportunity for business whether with Pemex or with other players in the private sector, as the energy market is still a national priority.

[Read more here](#)





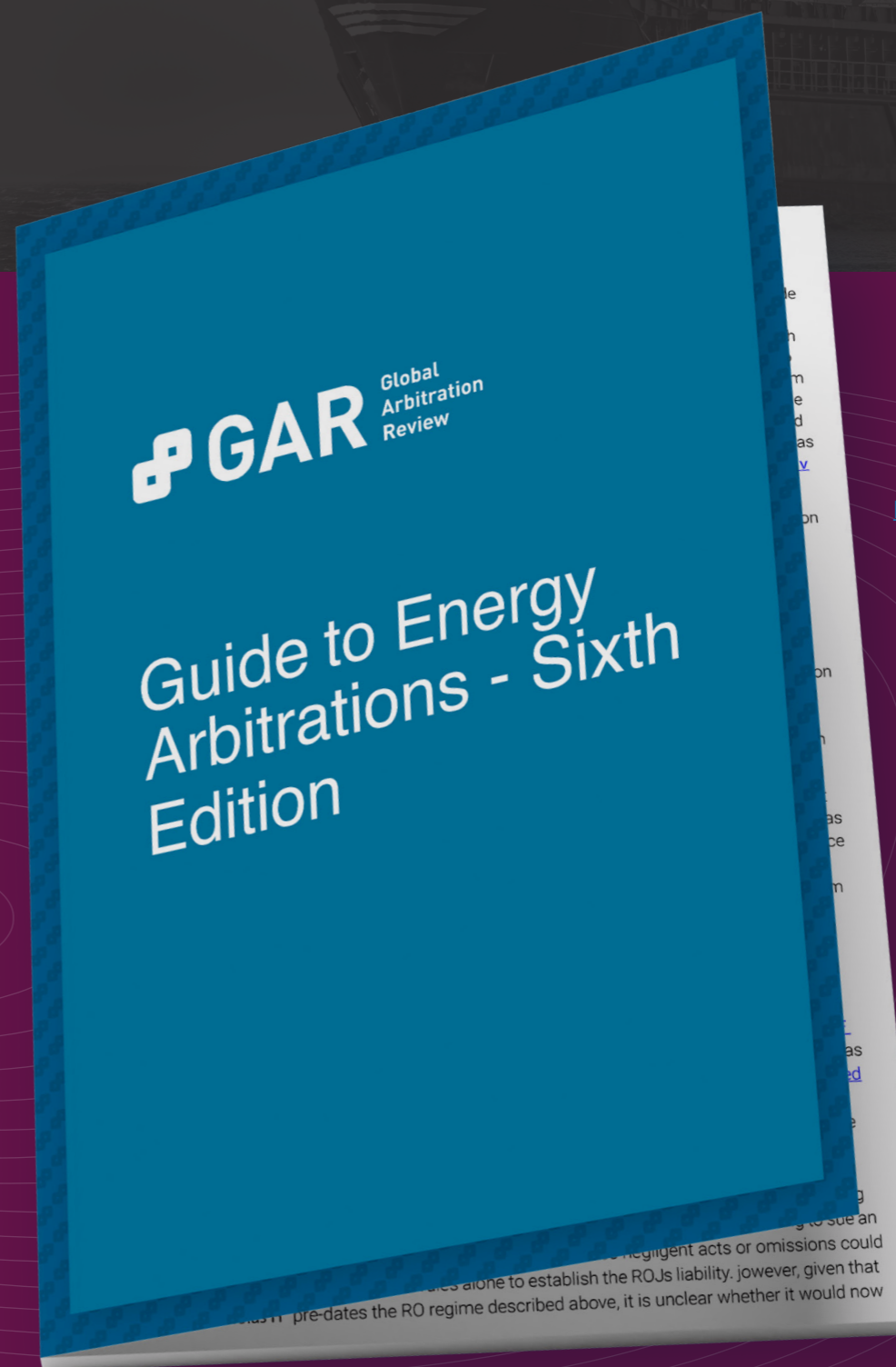
[Lexology Getting the Deal Through – Shipbuilding 2024: England and Wales](#)

By Fiona Cain and Mette Duffy

May 06, 2024

The chapter on shipbuilding contracts governed by the law of England and Wales is written by Haynes Boone's Fiona Cain and Mette Duffy. It contains new content covering recent case law on guarantees, penalty clauses, alternative dispute resolution (including mediation) and sanctions as well as developments with alternative fuels, autonomous vessels and the UK's shipbuilding credit guarantee scheme.

[Read more here](#)



[Offshore Vessel Construction Disputes' Chapter to GAR's Guide to Energy Arbitrations - Sixth Edition](#)

By James Brown, William Cecil and Andreas Dracoulis

May 30, 2024

The Guide to Energy Arbitrations is a widely regarded reference tool for energy companies, their advisers and arbitrators. Written by authors who are renowned in the industry, the guide compiles information on the multitude of issues that may arise in energy disputes and provides guidance for minimizing the risk of and resolving such disputes.

[Read more here](#)

SHIPPING PRESS RELEASES

[Haynes Boone Advises KAUST in Connection with Shipbuilding Contract for RV Thuwal II](#)

Andreas Dracoulis and Mette Duffy

September 17, 2024

Haynes Boone London Partner Andreas Dracoulis and Counsel Mette Duffy advised King Abdullah University of Science and Technology (KAUST) in connection with a shipbuilding contract for the construction of a research vessel. The vessel, which will be known as RV Thuwal II, will be constructed by Freire Shipyard at its yard in Vigo, Spain.



With an expected completion in 2026, RV Thuwal II will be the flagship of the Saudi research vessel fleet and available to serve all marine research interests of the nation, including giga-projects and government ministries. RV Thuwal II will have the capacity to explore all the major scientific interests of the Red Sea, such as coral reefs, other marine life and geological formations, which will both strengthen Saudi research and attract more international partners.

“RV Thuwal II symbolizes KAUST’s commitment to enhancing Saudi Arabia’s research infrastructure and the exploration of the Red Sea,” said KAUST Vice President of Research Pierre Magistretti in a prepared statement.

[Read more here](#)

[Haynes Boone Advises Golar LNG Ltd. on \\$2.2 Billion FLNG Project](#)

William Cecil, Andreas Silcher and Mette Duffy

September 27, 2024

Haynes Boone London Office Managing Partner William Cecil, Partner Andreas Silcher and Counsel Mette Duffy assisted Golar LNG Limited (“Golar”), a NASDAQ-listed liquefied natural gas (LNG) maritime infrastructure company, in its \$2.2 billion USD MK II floating liquefied natural gas (FLNG) conversion project. The project, expected to be delivered in Q4 2027, will convert the Golar-owned LNG carrier Fuji LNG into a MK II FLNG vessel with an annual liquefaction capacity of 3.5 million tons of LNG.

The recent signing of the \$1.6 billion USD EPC agreement between Golar and CIMC Raffles (“CIMC”) is a significant milestone for Golar and its partners on this project, CIMC and Black & Veatch (“B&V”).

[Read more here](#)

AUTONOMOUS VESSELS ALERTS AND ARTICLES

[New Workboat Code Includes Remotely Operated Unmanned Vessels for First Time](#)

Fiona Cain and Kayley Rousell

January 26, 2024

In December 2023, the Workboat Code Edition 3 (the “Code”) entered into force, following a consultation in 2022. This is a seminal moment for the autonomous vessel sector as, for the first time, the workboat code specifically addresses remotely operated unmanned vessels (“ROUVs”) operating as workboats.

[Read more here](#)

[Huge Remote-Controlled Vessels Are Setting Sail](#)

Fiona Cain in the *BBC*

March 07, 2024

The U.K. government has already taken a view on this topic and desires to incorporate the idea of remote masters into legislation.

“There is a huge industry coming and the government obviously doesn’t want to miss out on the opportunities. They want to see companies invest here and operate their vessels from here,” observed Shipping Counsel Fiona Cain.

[Read more here](#)

[New Roadmap from IMO for Maritime Autonomous Surface Ships](#)

By Fiona Cain and Milad Amani

May 07, 2024

Maritime Autonomous Surface Ships (“MASS”) were on the agenda at two IMO committee meetings in April 2024. At the 48th session of the Facilitation Committee (“FAL”) and at the 111th session of the Legal Committee (“LEG”) approval was given to the roadmap for addressing legal issues related to MASS, as well as revising the roadmap in relation to the impact of MASS on the Convention on Facilitation of International Maritime Traffic (the “FAL Convention”). The FAL Convention, which was first introduced in 1967, aims to simplify requirements and procedures on ships’ arrival, stay and departure and is continuously updated by the IMO.

[Read more here](#)



OFFSHORE ENERGY DIGEST 2024

Introduction by Glenn Kangisser

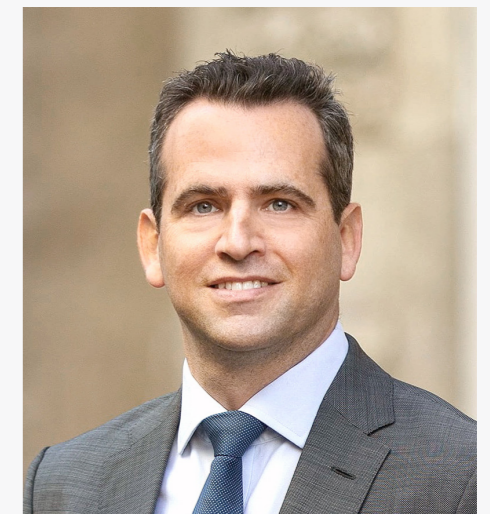
I am pleased to introduce the Offshore Energy section of the Haynes Boone Shipping and Energy Newsletter Annual Digest as we move into 2025. Our content over the past year has continued to highlight our longstanding focus on the legal challenges facing the offshore oil and gas sector and the accelerating energy transition, ensuring comprehensive coverage of each critical areas.

As the UK progresses towards its 2050 net-zero target, our coverage reflects the growing importance of decommissioning and its central role in the country's evolving energy landscape. Decommissioning is not only a critical component of the energy transition but also a key factor in achieving the 2050 net-zero target. Its significance cannot be overstated as it plays a pivotal role in reducing carbon emissions and ensuring a sustainable future.

The developments in this area remain crucial as we navigate the complex path to a sustainable and low-carbon future.

In this section you will find the following:

- At the start of the year, Glenn Kangisser and Fiona Cain authored an article for Energy Voice titled "**Challenges for the UK Offshore Oil and Gas Supply Chain in 2024**," which examines the challenges caused by project delays, fluctuating oil prices, changes in tax policies, and political uncertainty stemming from regulatory shifts and geopolitical
- We continue to cover developments in the decommissioning sector:
 - In the article titled "**Decommissioning in the UKCS: Where are we now?**," Glenn Kangisser outlines the steps that the North Sea Transition Authority is planning to take to address the slow progress made in the decommissioning sector this year. This is also the subject of the Financial Times article titled "**North Sea Regulator Threatens to Name Oil Groups for Decommissioning Delays**," in which Glenn Kangisser was quoted.
 - In the article titled "**U.K. Decommissioning Sector: More Spend, Less Progress**," Glenn Kangisser and Shu Shu Wong analyse the key findings from OEUK's recently published "Offshore Decommissioning Report 2024" and identify the primary factors contributing to an increase in decommissioning spending for considerably less work in the UKCS in 2023.
 - Glenn Kangisser also spoke to Upstream in the article titled "**How Could UK Budget Hit North Sea Decommissioning Backlog?**"



GLENN KANGISSER
Partner

- Following the first budget from the new Labour government, Glenn Kangisser spoke to *Upstream* in the article titled "UK Government Cuts Oil and Gas Investment Allowance, Hikes Headline Tax Rate," about the impact on new exploration and the UK's energy security and tax revenue.
- Glenn Kangisser delivered a talk at the IADC Contracts and Risk Management Conference on current market trends. He also discussed the key contractual issues that drilling contractors should be aware of and address in their negotiations. He also spoke to Stephen Whitfield of *Drilling Contractor Magazine* on "**5 Key Points to Consider When Navigating the Current Upcycle in the Offshore Drilling Market**".
- Our London-based capital markets and securities colleagues, Martin Pugsley, Michael Byrne and Christopher Orford, provided in-depth insights on the Financial Conduct Authority's approval of Ithaca Energy Plc's prospectus. Their commentary, featured in the alert "**UK Financial Services Update: the UK's High Court rejects Client Earth's application for judicial review**," highlights the critical intersection of energy and financial regulation.



OFFSHORE ENERGY ALERTS AND ARTICLES

Challenges for the UK Offshore Oil and Gas Supply Chain in 2024

Glenn Kangisser and Fiona Cain in *Energy Voice*

January 16, 2024

The UKCS offshore oil and gas market supply chain is not averse to challenge having ridden the wave of the oil price collapse, Brexit and Covid-19 over the last decade.

However, the supply chain is suffering from a new breed of challenges arising from project, fiscal and political uncertainty, which has increased the prospect for disputes.

[Read more here](#)

UK Financial Services Update: the UK's High Court Rejects ClientEarth's Application for Judicial Review

By Martin Pugsley, Michael Byrne and Christopher Orford

January 17, 2024

ClientEarth (the climate change pressure group) have had their application for judicial review of the Financial Conduct Authority's (the "FCA") decision to approve the prospectus of Ithaca Energy Plc ("Ithaca") rejected by the High Court. See our **earlier Alert** for details of ClientEarth's application.

[Read more here](#)

Decommissioning in the UKCS: Where Are We Now?

By Glenn Kangisser

September 17, 2024

The UK industry has been working on decommissioning projects for decades, with the Petroleum Act 1998 (as amended by the Energy Act 2016) governing decommissioning on the United Kingdom Continental Shelf ("UKCS")'s offshore oil and gas installations. These regulations legally oblige operators to leave marine environments clean and safe once their production activities cease, which entails removing certain of their platforms, pipelines and wells.

[Read more here](#)

North Sea Regulator Threatens to Name Oil Groups for Decommissioning Delays

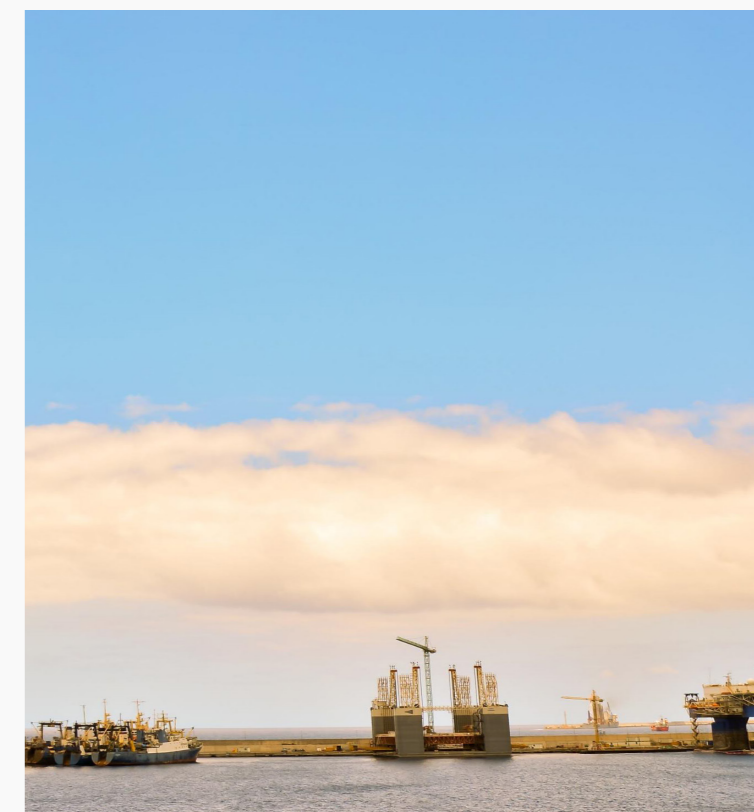
By Glenn Kangisser in *Financial Times*

September 18, 2024

Glenn Kangisser, a partner at law firm Haynes Boone, who specialises in offshore energy, said a transparent register would "help the supply chain by providing clarity around upcoming projects".

But he added: "I suppose you will also have to look at how the public and investor community react towards the publication and publicity around breaches. And you can consider whether NGOs might seek to amplify publication of breaches, which might in itself prompt action."

[Read more here](#)





[How Could UK Budget Hit North Sea Decommissioning Backlog](#)

By Glenn Kangisser in *Upstream*

October 29, 2024

Government plans to slash UK North Sea investment allowances will heap extra pressure on operators already battling a growing backlog of decommissioning work amid soaring costs, industry sources said.

...

"These tax changes are expected to make it harder for operators to pay for their decommissioning obligations when they fall due. Therefore, more stringent financial assurance mechanisms may be needed to ensure operators have enough funds set aside for decommissioning," Glenn Kangisser, partner in legal firm Haynes Boone's London energy team told *Upstream*.

[Read more here](#)

“
These tax changes
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decommissioning
obligations when
they fall due.
”

[UK Government Cuts Oil and Gas Investment Allowance, Hikes Headline Tax Rate](#)

By Glenn Kangisser in *Upstream*

October 31, 2024

Glenn Kangisser, partner in legal firm Haynes Boone's London energy team, told *Upstream*: "This move is expected to discourage new exploration and development activities in the UK Continental Shelf (UKCS) by significantly reducing returns and incentives for companies operating in the sector. Consequently, capital spending and employment within the industry may decline substantially."

[Read more here](#)

[UK Decommissioning Sector: More Spend, Less Progress](#)

By Glenn Kangisser and Shu Shu Wong

December 03, 2024

The UK decommissioning sector spent more but achieved less in 2023, according to Offshore Energy UK's recently published "Offshore Decommissioning Report 2024" ("**OEUK Report**"). In 2023, the United Kingdom Continental Shelf ("**UKCS**") experienced a 6% increase in decommissioning spend compared to the previous year; significantly less than the 37% previously forecasted.

The findings of the OEUK Report are in line with many of the observations set out in our previous article (see "**Decommissioning in the UKCS: Where are we now?**") and we provide an update on some of the key issues below.

[Read more here](#)

RENEWABLE ENERGY DIGEST 2024

Introduction by Conrad Purcell



Our work in the energy and infrastructure projects space often puts us at the forefront of technological change, and the projects we worked on in 2024 have exemplified this. We have seen consolidation in the renewable energy operations and maintenance market, with several mergers between O&M services businesses. This is largely driven by the continued focus on maximisation of renewable power installations and the growing sophistication of this part of the sector.

In this section of the newsletter we have included an article exploring **the use of digital twins to mitigate operational risks for wind and solar projects**. Another example of how changing technology is impacting our infrastructure is the growth of the hydrogen economy. We were pleased to advise a client on a blue hydrogen project in the UK and have written about the impact this will have on existing infrastructure, such as gas pipelines designed to carry natural gas, in an article published in the *Global Hydrogen Review*.

Much has been written about the evolution of ESG in the market, but we continue to work with our clients funding energy and infrastructure projects with sustainability-linked loans and green loan structures. In articles published by Infrastructure Investor and *Clean Energy Pipeline*, we explore **how ESG considerations continue to shape project finance** for renewables and for infrastructure more broadly.



CONRAD PURCELL
Partner



RENEWABLE ENERGY ALERTS AND ARTICLES

[How Digital Twins Can Mitigate Operational Risk for Wind and Solar Projects](#)

Conrad Purcell and Kayley Rousell in *Infrastructure Investor*

December 11, 2023

For two decades, the global use of wind and solar energy has been on a significant upswing and both technologies continue to dominate new generating capacity. 2022 marked the third best year ever for new wind capacity, increasing global total installed capacity from 824GW to 898GW – an increase of around 9 percent compared to 2021

– while solar remained the industry leader with an overall capacity increase of 22 percent to reach 1.05TW. As the deployment of wind and solar power has expanded, operators have increasingly focused their efforts on maximisation of operational assets. In line with the growth of the Internet of Things and artificial intelligence, the use of traditional Supervisory Control and Data Acquisition (SCADA) systems has evolved in the wind and solar energy space to the development and use of modern digital twin technology.

[Read more here](#)

[The FCA's Anti-Greenwashing Rule: Industry Reaction and Timing Concerns](#)

By James Tinworth, Christopher Orford and Zainab Al-Qaimi

February 21, 2024

By 2026, it is expected that ESG-oriented assets being managed globally will rise to \$34 trillion. As such, it is no surprise that firms are trying to meet the ever-increasing demand for sustainable investments. This has led to concerns from regulators of exaggerated and misleading sustainability-related claims about products being made to garner such investments.

[Read more here](#)



[Adapting in a New Era](#)

By Conrad Purcell in *Global Hydrogen Review*

March 28, 2024

The electrification of transport, heating and industry, using power generated from renewables, is the basis on which many governments hope to reduce greenhouse gas (GHG) emissions and thereby arrest climate change. Inevitably there will be certain sectors in which GHG emissions are hard to abate, such as shipping, aviation, steel and cement production and petrochemicals.

In order to reduce GHG emissions from these sectors, governments are supporting industry to find solutions based on the use of hydrogen and its derivatives. If a substantial part of the economy is to be powered by hydrogen, then the existing hydrocarbon infrastructure will need to be adapted to work with alternative fuels.

[Read more here](#)

[The Challenge and Opportunity of Scaling Up Floating Offshore Wind](#)

By Jonathan Morton in *Utility Week*

May 09, 2024

For the world to realise the promise offered by offshore wind, the use of floating technology is essential. Fixed offshore wind systems can only be installed in water depths up to 60 metres, which rules out around 80% of potential European ocean real-estate. This inability to tap into wind resources at deep or complex seabed locations can be solved by floating structures, a fact which is particularly significant for states that lack a shallow coastline but are keen to invest.

[Read more here](#)





[Haynes Boone Talks Funding for Renewable Energy Project Developments](#)

By Conrad Purcell in *Global Hydrogen Review*

May 23, 2024

Renewable energy project developers, like developers of all types of infrastructure projects, all have one thing in common. As they move down the path from ideation through development and ultimately to construction of their projects their capital outlay grows while the prospect of generating revenue remains some way off.

Although a developer could use its own cash reserves to fund a project's development and construction costs many developers consider it to be inefficient to use cash in this way, on an unlevered basis. As such, it is common for developers to enter into arrangements with third parties to help cover their development and construction costs.

[Read more here](#)

[Catching the breeze: GB Energy and the future of Offshore Wind](#)

By Jonathan Morton

September 20, 2024

As we move into a blustery autumn here in London, a similar period of change looks to be taking place in the offshore wind industry. The past few weeks have seen a flurry of activity both in the UK and around the world. Dominating the recent headlines has been the UK Government's announcement of the results of CfD AR61 on 3rd September 2024. The sector had been watching the outcome of this auction round with some trepidation, following the disaster of AR5, where no bids for offshore wind projects were received.

[Read more here](#)

[How ESG Considerations are Shaping Project](#)

By Conrad Purcell and Kayley Rousell in *Infrastructure Investor*

October 03, 2024

ESG continues to play an important role in project finance owing to the long-term tenor of the investments and accompanying sustainable financing packages relating to such investments. Despite a slight decline from the peak of ESG popularity in 2021, it is estimated that issuance of sustainable debt globally reached \$800 billion in the first half of 2024, equating to almost the same levels as the first half of 2023. In the project finance space investors and lenders are increasingly looking for projects that generate both a return on investment and those that are incorporating ESG into their physical project-level design and wider corporate/financing structure. Here we explore examples of metrics that are often included in project finance loan facility agreements and the use of sustainability-linked loans as a specific type of project finance instrument.

[Read more here](#)

“
 Despite a slight dip in ESG’s peak popularity, sustainable debt issuance reached \$800 billion in the first half of 2024, underscoring the growing investor and lender demand for projects that blend financial returns with ESG-focused design and strategy.
 ”





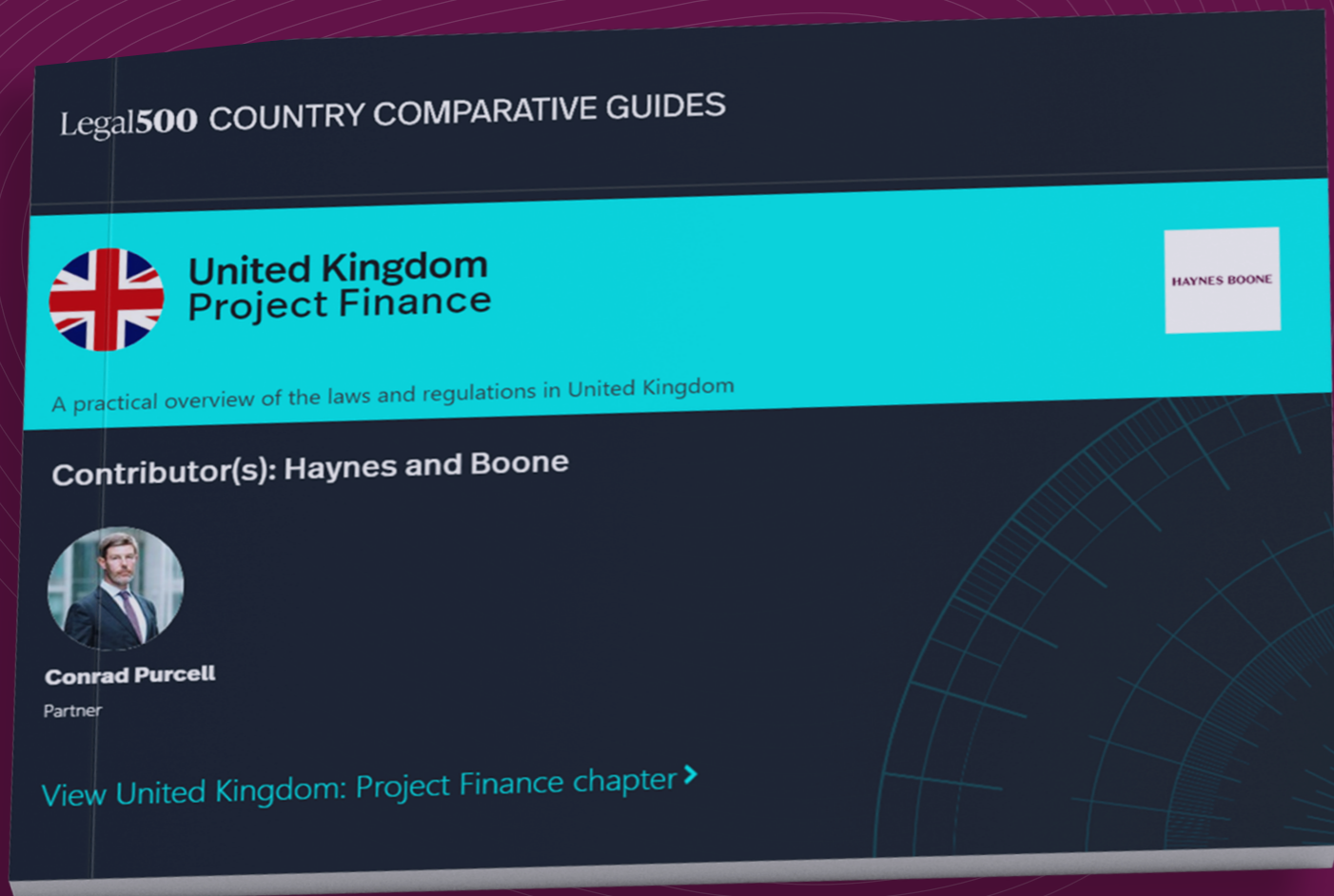
[The Legal 500: U.K. Project Finance Comparative Guide](#)

Conrad Purcell in *Legal 500 UK*

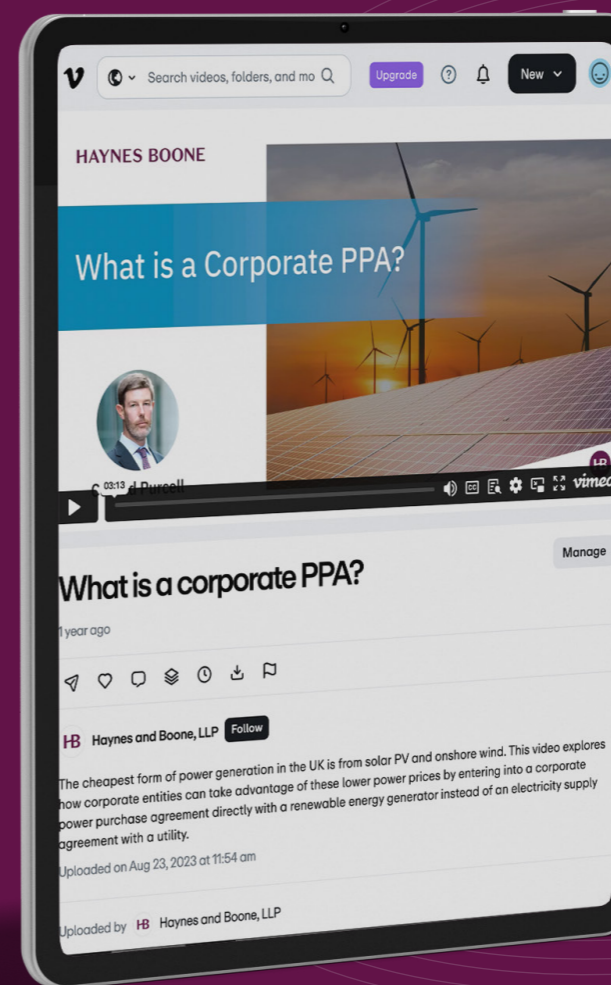
January 17, 2024

The Guide provides a Q & A and overview of project finance laws and regulations applicable in the United Kingdom.

[Read more here](#)



Conrad Purcell has published a series of six videos answering key questions on project finance and renewable energy.



[What is a Corporate PPA?](#)

[How early in the life of a project does a project company need to be incorporated?](#)

[Can foreign investors develop energy or infrastructure projects in the UK?](#)

[What kind of security do lenders commonly require over projects?](#)

[What sources of funding are available for renewable energy projects?](#)

[What are the key risks that need to be addressed when financing a project?](#)

DISPUTE RESOLUTION DIGEST 2024

Introduction by James Brown, William Cecil and Andreas Dracoulis



HB



JAMES BROWN
Partner



WILLIAM CECIL
Partner



ANDREAS DRACOULIS
Partner

As 2024 comes to an end, the landscape of dispute resolution under English law has been marked by a series of developments on which our team has provided commentary throughout the course of this year.

One development we have reviewed is the introduction of the Arbitration Bill. Currently under consideration by the House of Commons, this bill aims to modernise and strengthen the arbitration framework of England and Wales and will ensure that London remains one of the seats of choice for international arbitration.

We have also looked at arbitrator impartiality, including scrutinising the standards of review and disclosure rules for arbitrators, as well as the rules surrounding the disclosure of third-party funders.

Decisions from the Supreme Court this year that have featured in our newsletter include determining whether *force majeure* clauses can be overcome by the exercise of reasonable endeavours and whether a legally binding contract has come into existence.

We have also considered judgments on key contractual issues including:

- *Lancashire Schools SPC Phase 2 Ltd v Lendlease Construction (Europe) Ltd & Ors* highlights that the application of judicial discretion continues in respect of contractual dispute resolution procedures;
- The High Court's decision in *Dandara South East Ltd v Medway Preservation Ltd* which provided valuable insight on a novel point – can an expert determination clause be separable from the underlying contract;
- The Privy Council's decision in *Sian Participation Corp v Halimeda International Ltd* that will change the court's treatment of arbitration clauses when resolving disputes involving insolvent parties; and
- In *Topalsson GmbH v Rolls-Royce Motor Cars*, the Court of Appeal considered the interplay between liability caps and set off, and its application to contractual interest.

DISPUTE RESOLUTION ALERTS AND ARTICLES

[Making English Arbitration Fit for the 21st Century](#)

By Fiona Cain and Kayley Rousell on *Law.com*

December 13, 2023

The importance of international arbitration to the U.K. was recently confirmed by the U.K. government's decision to include the Arbitration Bill in the first King's Speech by King Charles III on 7 November 2023 (the "Bill"). The Bill has now completed its first reading in the House of Lords and will be debated further by the UK Parliament during the current parliamentary session. It is intended to become the Arbitration Act 2024 for England, Wales and Northern Ireland.

[Read more here](#)

[Mediation and Impact of Churchill v Merthyr Tydfil County Borough Council](#)

By Fiona Cain and Charlotte Mullis in *Solicitors Journal*

February 08, 2024

On 29 November 2023, the Court of Appeal handed down its judgment in *Churchill v Merthyr Tydfil County Borough Council* [2023] EWCA Civ 1416, ruling that courts can order parties to engage in alternative dispute resolution (ADR), including mediation. This signifies an important shift by the courts of England and Wales in their approach to mediation.

[Read more here](#)



[Discretion and Dispute Resolution Clauses: doing away with a mandatory step](#)

By Jonathan Morton

February 12, 2024

Ordinarily, when a contract places an obligation on a party, one would expect the courts to enforce that obligation. But the overriding objective —to deal with cases justly and at proportionate cost —allows judges to exercise their discretion and potentially avoid the strict letter of the law. This is one element of "litigation risk" inherent in any dispute: even if the contract and the case law are clear, a contrary decision may still potentially (though rarely) be made.

[Read more here](#)

[Ever Given Contract Ruling Highlights Value of Lloyd's Open](#)

Fiona Cain in *Lloyd's List*

April 02, 2024

Fiona Cain, counsel in the shipping practice at law firm Haynes Boone, said the court had found the owners failed to demonstrate the parties' exchanges evinced an unequivocal intention to be bound.

[Read more here](#)

[Supreme Court Clarifies "Reasonable Endeavours" Interpretation](#)

By Fiona Cain in *International Comparative Legal Guides*

May 15, 2024

"The Supreme Court has held that the exercise of reasonable endeavours in a *force majeure* clause will not generally require a party to accept non-contractual performance (such as payment in alternative currencies), and that this principle is of general applicability and not confined to the immediate drafting. The decision should help avoid the need to consider delicate factual considerations in deciding whether non-contractual performance would be acceptable —the considerations are limited to the steps that can be taken to ensure contractual performance, nothing more."

[Read more here](#)



[May the Force \(Majeure\) Be With You: Supreme Court Restores Certainty on What Reasonable Endeavours in Force Majeure Clauses Require](#)

By Glenn Kangisser, Fiona Cain and Jack Spence

May 21, 2024

The Supreme Court has confirmed that *force majeure* ("FM") clauses which provide that an event must not be capable of being overcome by reasonable endeavours do not require a party to accept non-contractual performance unless there is clear wording requiring it.

[Read more here](#)

[Entering Into a Binding Contract – Recent Lessons From the English Courts](#)

By Andreas Dracoulis and Fiona Cain

June 24, 2024

A binding contract is concluded when there is an offer, acceptance and consideration, as well as an intention to create legal relations and certainty of the terms of the contract.

However, it can be difficult to determine when a binding contract is concluded, particularly where there are urgent negotiations between the parties in order to commence work quickly. Difficulties can also arise when negotiations take place over a protracted period or when using multiple channels of communication, including newer methods such as WhatsApp messaging.

[Read more here](#)

[Mealey's International Arbitration Report - Disclosure](#)

Andreas Dracoulis and Jonathan Morton in *Mealey's*

July 24, 2024

Are the current standards of review and disclosure rules for arbitrators sufficient? Andreas Dracoulis and counsel Jonathan Morton's recent article in Mealey's International Arbitration Report discusses the issue of Arbitrator impartiality.

[Read more here](#)

[Revisiting the question of whether liquidated damages are the sole remedy for delay](#)

By Glenn Kangisser and Teena Grewal

September 17, 2024

Construction contracts and contracts for the procurement of goods and services typically provide that liquidated damages (LDs) are payable by the contractor at a fixed rate or percentage of the contract value for each day or week of delay in achieving a specified milestone, generally up to a specified aggregate limit. These are typically agreed upon since court proceedings to determine general damages for a breach of contract can be complex, time consuming and costly.

[Read more here](#)

[Mealey's International Arbitration Report – Disclosure of Third-Party Funders](#)

Andreas Dracoulis and Jonathan Morton in *Mealey's*

October 30, 2024

Partner Andreas Dracoulis and Counsel Jonathan Morton's recent article in Mealey's International Arbitration Report discusses the ICSID Arbitration Rules and The Disclosure of Third-Party Funders.

[Read more here](#)

[Arbitration and Insolvency - Where a Genuine Dispute Matters](#)

By Michael Mulligan and Charlotte Mullis

November 25, 2024

In June 2024, the Judicial Committee of the Privy Council ("Privy Council") made a decision that will change the way in which the English Courts approach arbitration clauses when resolving disputes involving insolvent parties. *Sian Participation Corp v Halimeda International Ltd [2024] UKPC 16* ("Sian v HIL") decided that a winding-up petition for a disputed debt, which is subject to an arbitration agreement, will only be stayed or dismissed when there is a genuine dispute over the debt on substantial grounds.

Sian v HIL was an appeal to the Privy Council from the British Virgin Islands ("BVI") on a matter of BVI law and traditionally would not have been strictly binding on the English Courts. However, the Privy Council decided that the decision would also be binding on English Courts.

[Read more here](#)



[Separating An Expert Determination Clause in the Event of Termination](#)

By James Brown, Fiona Cain and Zainab Al-Qaimi

December 04, 2024

A recent ruling from the English High Court in *Dandara South East Ltd v Medway Preservation Ltd* [2024] EWHC 2318 (Ch) has provided guidance on a novel point for which there was no decided authority – whether an expert determination clause can be separable from the underlying contract, in the same way that an arbitration clause is so separable and remains effective in the event of termination unless the parties have otherwise agreed.

[Read more here](#)

[Keep Your Blunt Instrument Sharp! - Court of Appeal's Interpretation of a Liability Cap](#)

By Amanda Larrington

December 04, 2024

In the recent case of *Topalsson GmbH v Rolls-Royce Motor Cars Limited* the Court of Appeal considered the interplay between a contractual liability cap and set off, and its application to contractual interest.

[Read more here](#)

ARTIFICIAL INTELLIGENCE DIGEST 2024

Introduction by James Brown



With 2023 perhaps having been the year in which we all came to recognize that Artificial Intelligence is likely to play a significant part in our future day-to-day existences, 2024 was the year in which lawmakers and regulators have taken significant steps to seek to introduce protections against its possible harms whilst allowing for its development given the significant benefits it promises.

Throughout the year, we have kept abreast of key developments. This has primarily included tracking progress towards the coming into force, finally, of the European Union's "AI Act" in August (albeit its various chapters will gradually apply from early next year through to mid-2027). Any party that is involved in the development, distribution or use of AI systems in ways that are connected with the EU should have close regard to the obligations applying under this piece of legislation. Even if not, however, this piece of legislation is very likely to provide strong direction for the regulation of AI products around the world as states other than those within the EU take action to regulate AI.



JAMES BROWN
Partner

In February we reported on the progress of the Government then in place towards the control of AI in the UK.

In March, together with my colleague **Hong Shi** of our Austin office, we provided some commentary on the issue of the control of AI's use within the fashion industry.

We also reported in the autumn on the agreeing of the text of a ["framework convention" on AI, human rights, democracy and the rule of law by the Council of Europe](#). This is a landmark convention that is intended to promote the international adoption of legislative, administrative or other protection against the harmful risks associated with AI.

As much as we enjoy sharing updates on development via written pieces, this year also presented an opportunity for us to explore some of the issues with colleagues "across the pond" through a number of podcast episodes published in the firm's ["AI Chats"](#) series. It was fascinating to cooperate with **Dina Blikshteyn** and **Peter Halprin** in our New York office, and **Hong Shi** in our Austin office in the creation of these.

With AI here to stay, and with its rapid development and adoption, it is clear that we are in a fascinating age in which questions about how we should regulate and control these new technologies are having to be addressed, and quickly. We intend to continue to follow and report on key developments throughout the course of next year and beyond.

AI ALERTS AND ARTICLES

[The UK Courts and Tribunals Judiciary Issues Guidance to Judicial Office Holders on Use of Artificial Intelligence](#)

By James Brown and Jack Spence

January 03, 2024

On 12 December 2023, the UK Courts and Tribunals Judiciary issued non-binding guidance to Judicial officeholders, regarding the use of artificial intelligence technologies ("AI") in the courts (the "AI Guidance"). While this guidance is non-prescriptive and at a relatively high level, it recognises that there are valid and sensible uses of AI in the judicial context (such as there are in the practice of law) but at the same time offers a useful reminder to all lawyers as to the considerations to bear in mind in the context of AI in the legal setting.

[Read more here](#)

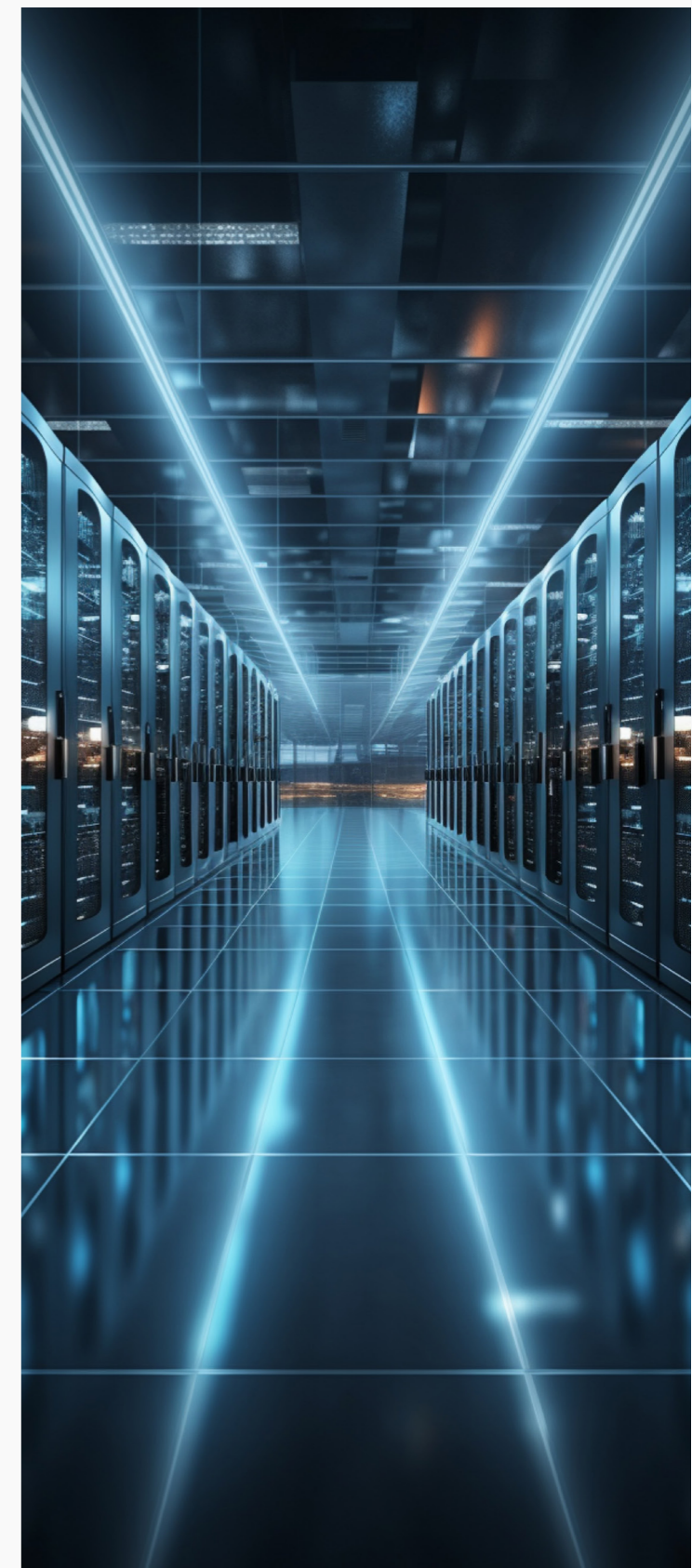
[EU Agreement on the Text of a New AI Act](#)

By James Brown in *IPWatchdog*

January 04, 2024

On December 8, 2023, a provisional agreement was reached between the European Union (EU) Parliament and the EU Council on the basic content of the new AI Regulation (the "AI Act") to be implemented as legislation in the EU. The text is still not publicly available as it is subject to certain further refinement over the coming weeks. However, there is information available in the public domain (including press releases issued by the European Union) as to the likely format of the AI Act.

[Read more here](#)





[Publication of UK Government's Response to its 2023 White Paper on AI Regulation](#)

By James Brown

February 26, 2024

In February 2024, the UK Government has, via the Department of Science, Innovation and Technology ("DSIT"), published its response paper titled "A pro-innovation approach to AI regulation; government response". This follows its consideration of responses to its white paper on AI regulation published last year. The intention stated in the white paper had been to report back on this in the autumn of last year, so the publication of the response is a little later than expected.

[Read more here](#)

[Europe is Clamping Down on AI. Here's What it Means for Fashion](#)

By James Brown and Hong Shi in *Vogue Business*

March 18, 2024

The AI Act could "potentially raise awareness and instill confidence in the responsible use of AI technology across a broad spectrum of participants within the fashion industry, from designers to manufacturers, retailers, e-commerce platforms, fashion influencers, celebrities and consumers," says Hong Shi, counsel at law firm Haynes Boone and co-chair of the firm's AI practice. "As AI becomes increasingly integrated into various aspects of their operations, the Act is likely to stimulate discussions about ethical AI usage across the various players."

[Read more here](#)

[The EU Artificial Intelligence Act – Approval by the European Parliament](#)

By James Brown and Milad Amani

April 12, 2024

The European Parliament on Wednesday 13 March 2024 approved the European Union's Artificial Act (the "Act"), being the world's first comprehensive piece of legislation aimed at the regulation of Artificial Intelligence ("AI").

[Read more here](#)

[The EU's AI Act Finally Published in the EU Official Journal – inForce by 1 August](#)

By James Brown and Milad Amani

July 17, 2024

The EU's Artificial Intelligence Act (the "AI Act") has on 12 July 2024 finally been published in the EU Official Journal.

This is very significant as the AI Act will enter into force 20 days after the date of its publication (so on 1 August 2024).

The AI Act provides for the gradual application of its chapters and sections with the earliest application being six months after its date of entry into force — so early 2025 — when its provisions relating to prohibited AI practices will apply, through to the final application of all sections in mid-2027.

[Read more here](#)

[New Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law](#)

By James Brown

September 18, 2024

The Council of Europe — an international organization based in Strasbourg comprising 46 European countries (including 27 that are members of the European Union) and which was set up in 1949 to promote democracy, human rights and the rule of law — has contributed to the ever-developing regulation of artificial intelligence with the opening for signature early this month of its "Framework Convention on Artificial Intelligence and Human rights, Democracy and the Rule of Law" (the "Convention").

[Read more here](#)

In the first instance, parties should assess their internal systems and other potential uses of AI and determine whether and how they fall within the scope of the AI Act to assess which timelines and provisions will be applicable to them.



CASE SUMMARIES AND LEGISLATION 2024

[AI Chats Episode 34: Guidance for UK Judiciary on the Use of AI](#)

With James Brown, Dina Blikshteyn and Hong Shi

February 5, 2024

This episode delves into an increasingly pivotal subject within the legal community - the integration of AI into legal practices, particularly in light of recently issued guidance for UK Judiciary on the use of AI. Notably, while this guidance is primarily for members of the judiciary, it provides insightful advice that could benefit everyone practicing law. Join us as we examine the implications of the guidance for the legal community.

[Listen to the podcast here](#)

[AI Chats Episode 35: AI Regulation Development in Europe: Update on Progress of the EU AI Act](#)

With James Brown, Dina Blikshteyn and Hong Shi

April 4, 2024

In this episode of AI Chat's, hosted by Hong Shi, counsel from the Austin office and co-chair of the AI group at Haynes Boone, listeners are treated to a deep dive into the recent developments in AI regulation within the EU. Joined by colleagues Dina Blikshteyn, a partner in the New York office and co-chair of the AI group, and James Brown, a partner and expert in energy marine general commercial litigation from the London office, the conversation delves into the urgent need for comprehensive legal frameworks to address the unique challenges posed by AI.

[AI Chats Episode 43: AI Regulation in the US and EU: What's Next and Will Insurance Offer Relief?](#)

With James Brown, Peter Halprin, Dina Blikshteyn, William Joy

June 13, 2024

In this episode of The Legal Landscape, Haynes Boone Partners Dina Blikshteyn, James Brown and Peter Halprin sat down with William Joy to discuss the recently enacted Colorado AI Act and how it compares to the EU AI Act. They also discussed compliance challenges, liability risks and whether insurance can cover AI exposures along with what is likely coming next the artificial intelligence world.

[Listen to the podcast here](#)



This is a collection of the case summaries that have been included in our newsletters over the year and covers issues that we consider could be of interest to those operating in the shipping, offshore energy and renewable energy sectors. If you would like further details on any of these cases, please email

shippingenergynewsletter@haynesboone.com.

Scope of Mortgagor's Duties Clarified

Momentum had not paid sums due under a loan agreement, so Eurobank arrested vessels (which had already been arrested by other creditors) over which it had a mortgage, as security. The vessels were then sold by the port authority. Momentum claimed that Eurobank was in breach of its equitable duties, by failing to ensure the market price was obtained. However, the court rejected this—as the bank had not sold the vessels. They had only arrested them, and their only duty was therefore to ensure such arrest was in good faith.

Eurobank SA v Momentum Maritime SA & Ors [2024] EWHC 210 (Comm)

Permission to appeal to the Court of Appeal was refused on 29 January 2024.

Contractual Liabilities Recoverable Under a Claim in Tort

Ms. Armstead was provided with a hire car on terms which required her to pay hire for the period required to repair the car, if it was returned damaged. A negligently driven van, insured by Sun Alliance, collided with Ms. Armstead, so Ms. Armstead was required to pay hire for the period while the car was being repaired. She sought to recover this sum from Sun Alliance under a claim in tort.

The Supreme Court held that Ms. Armstead was entitled to recover this sum, as it was both not pure economic loss and not too remote..

Lorna Armstead v Royal and Sun Alliance Insurance Co. Ltd. [2024] UKSC 6

Offshore Works Within Can Be Subject to the Provisions of the Housing Grants Construction and Regeneration Act 1996

The court held that “England,” within the Act, extended to the baseline established by the Convention of the Territorial Sea and Contiguous Zone of 1958, the Territorial Waters Order in Council 1964 and the Territorial Sea (Baselines) Order 2014. This extended the jurisdiction of the Act beyond what many had assumed was the case, and in this instance, it covered pontoons installed outside the low water line and outside the boundary of England shown on an OS map but before the river entered the sea.

Van Elle Ltd v Keyvor Morlift Ltd [2023] EWHC 3137 (TCC)

Guidance on Interpreting Limitation Clauses

In the context of a complex dispute concerning an IT project for the Disclosure and Barring Service, Mr. Justice Constable provided useful guidance as to when a limitation of liability clause will be found to apply on a “per claim” or “aggregate” basis. Drafting referring to “aggregate liability” and “all other claims, losses or damages” was found to point towards a single cap for all claims.

Tata Consultancy Services Limited v Disclosure and Barring Service [2024] EWHC 1185 (TCC)

Clarification on Damages Payable and the Impact of Mitigation

The Supreme Court considered damages calculated under clause 25 of the GAFTA Contract No. 24 for late delivery of cost & freight free out sales, where the value had increased in the local market after unloading. Guided by the principle of mitigation, the Supreme Court found that the reasonable market for the sellers to sell into was the local market, where the price had increased, and therefore no damages were payable.

Sharp Corp Ltd v Viterro BV [2024] UKSC 14

What Information Is Required by a Clause Requiring Notice of Claims?

A contract required Drax to provide notice of claims in reasonable detail. Displaying a desire to prevent formalistic arguments extinguishing claims, the Court of Appeal held that this did not require Drax to provide notice of the precise basis or quantum of the damages claimed, provided enough information was provided to enable the receiving party to investigate the claims.

Drax Smart Generation Holdco Ltd v Scottish Power Retail Holdings Ltd [2024] EWCA Civ 477

Can You Avoid Paying a “Minimum Royalty” by Ceasing To Use the Asset?

The Court considered a licencing agreement with a minimum royalty rate, that also entitled a party to not use the asset, and thereby cease accruing royalties. The Court found that, notwithstanding the right to stop using the asset, the minimum royalty rate meant what it said and would still apply.

Virgin Aviation TM Ltd and another company v Alaska Airlines Inc (formerly Virgin America Inc) [2024] EWCA Civ 622

Arbitration Awards and Consumers – Challenges with Enforcement

Arbitral awards are, generally, readily enforceable in the UK, with only very limited recourse available under the Arbitration Act 1996. The Court of Appeal, however, considered that if an award sought to enforce a term which was unfair under the Consumer Rights Act (“CRA”), pursuant to section 62, the court would refuse to enforce the award. Although likely to be a rare occurrence in commercial practice, due to the CRA only applying to consumers, this decision offers a rare example of where the English courts may decline to enforce awards on the basis of public policy.

Eternity Sky v Zhang [2024] EWCA Civ 630

Qualification in a List Applying to All Items

Cantor's engagement letter with YES stated that a financing, defined as “the private placement, offering or other sale of equity instruments in any form...” would result in Cantor being entitled to a fee of 2 percent of the sums received. YES subsequently raised funds by a further public offering. The Court of Appeal upheld the High Court's decision that Cantor was not entitled to a fee in these circumstances. While there had been a “sale of equity instruments,” the court considered there to be a general assumption that a qualifier (such as “private”) at the start of a list would apply to all items. Because the “sale of equity” was not “private,” no fee was due.

Cantor Fitzgerald & Co v YES Bank Limited [2024] EWCA Civ 695

Anti-Assignment Clauses Do Not Prevent Novation

The High Court found that a clause prohibiting a party from “assign[ing], or grant[ing] any Encumbrance over or sub-contract or deal in any way with any of its rights under this agreement” without prior written consent did not stop an informal novation, where there was no transfer of existing rights. The case also offers a rare example of the court finding an estoppel by conduct, without a formal contract of novation.

Magee and others v Crocker and other [2024] EWHC 1723 (Ch)

Formal Guarantees by Informal Emails

In the context of a guarantee under a charterparty, the Commercial Court held that email exchanges agreeing recaps were sufficient to satisfy the requirement that a guarantee be signed and in writing, under Section 4 of the Statute of Frauds, and they would therefore be binding on the guarantor. This case offers a reminder to be careful of what you say in emails, as well as to consider adding pro-forma wording that an email signature does not indicate an intention to be bound.

SFL Ace 2 Company Inc v DCW Management Limited (Formerly Allseas Global Management Limited) [2024] EWHC 1877 (Comm)

CASE SUMMARIES AND LEGISLATION 2024 CONTINUED

Agreements to Agree – A Reminder of Their Unenforceability

Clauses providing that the parties will agree how to proceed in certain circumstances are not rare, but as the Commercial Court recognised, they can render an obligation unenforceable. English law does not permit an “agreement to agree.” The Commercial Court found that a provision stating that the price for certain goods was “to be fixed” at the end of the year contained such an “agreement to agree” and so was not binding.

KSY Juice Blends UK Ltd v Citrosuco GmbH [2024] EWHC 2098 (Comm)

The case is subject to an appeal, with a hearing scheduled for July 2025.

No Waiving Goodbye to Claims Without Knowing of Them

In the context of an energy supply agreement where URE continued the contract for six months after the underlying breach, the Commercial Court offered a reminder that, for a party to waive their claims by election, they need to know both the underlying facts giving rise to the claim and that they have a claim to waive. A party would know either if they had actual knowledge or had closed their eyes to avoid finding out. Here, URE had not known of the breach until shortly before it terminated. The court also gave some obiter comments that a no-waiver clause could be rebutted by a clear positive waiver, making clear that it was intended to apply notwithstanding the clause.

URE Energy Ltd v Notting Hill Genesis [2024] EWHC 2537 (Comm)

LIBOR Adjustments in a Post-LIBOR Age

Following a test case in the Financial List of the Commercial Court, the court implied a term into shares, effectively replicating LIBOR by reference to a reasonable alternative rate, which it considered to be synthetic LIBOR (for as long as that is published) or CME Term SOFR with a spread adjustment. For many parties who still have contracts with references to the (now defunct) LIBOR, this may provide useful guidance as to their continued operation.

Standard Chartered Plc v Guaranty Nominees Ltd [2024] EWHC 2605 (Comm)

Sanctioned Cargo: Navigating Legal Jeopardies with OFAC

Charterers became subject to U.S. OFAC sanctions, causing owners to refuse to discharge a cargo of naphtha to them. Charterers commenced arbitration, claiming damages and delivery of the cargo on the basis that the cargo could be delivered. The cargo remained onboard for over one-and-a-half years, so Owners applied for an order under section 44 of the Arbitration Act that the cargo be sold. The normal order is that proceeds are paid into court; however, Owners argued that the sanctions prevented payment of the proceeds into anywhere but a blocked OFAC account in the US. If Owners complied with the court’s order, then they could be subject to prosecution. The court, however, considered that the risk of prosecution was “fanciful,” given OFAC guidance, and that this would need to be considered against the prejudice that Charterers would suffer by the proceeds being paid into an account that they would not be able to access.

O v C [2024] EWHC 2383 (Comm)

Time’s Up: Hague-Visby Rules Anchor Misdelivery claims

The Supreme Court has upheld both the High Court and Court of Appeal’s judgments that the Hague-Visby Rules time bar applies to misdelivery claims after discharge.

Fimbank PLC v KCH Shipping Co Ltd [2024] UKSC 38

DIVERSITY AND EVENTS



INTERNATIONAL WOMEN'S DAY

The Haynes Boone Women in Energy and Shipping celebrated International Women's Day back in March with a newsletter including these two articles:

[Do We Have the Courage to Inspire? An interview with Stinne Taiger Ivø, Deputy Secretary General, BIMCO for International Women's Day and Women's History Month 2024](#)

To mark International Women's Day in March 2024, This year, Fiona Cain, spoke to Stinne Taiger Ivø of The Baltic and International Maritime Council. BIMCO, an NGO with over 2,000 members in 130 countries, which provides leadership to the global shipping industry and represents around 64 percent of the world's tonnage. Stinne was appointed deputy secretary general this year and is involved in leading BIMCO's documentary work and the development of standard contracts and clauses for use in the shipping industry and, more recently, the offshore renewables industry.



March 08, 2024

[Read more here](#)

[Diversity in the Royal Navy and the Legal Profession](#)

Fiona Cain authored an article for The Law Society Gazette alongside Commander Ally Pollard of the Royal Navy to discuss their experiences of diversity in the workplace and how the focus has changed during their careers.



The Chinese proverb "We help each other in the same boat and move forward hand in hand" seems apt for Ally and Fiona's discussion about diversity. Their careers have both centred around ships, Ally having served in numerous warships, while Fiona has resolved countless issues regarding ship construction.

February 23, 2024

[Read more here](#)

EVENTS

Haynes Boone Client Reception at the National Portrait Gallery

The London office hosted a Client Reception at the National Portrait Gallery, held in the Duveen and Ondaatje Wings, which showcase portraits from 1300 to 1850. The event was a great success, with over 200 guests in attendance, including nine colleagues from our U.S. offices, making the occasion even more memorable.

February 01, 2024



LEGAL DIRECTORIES



[Legal 500 UK 2024](#)

In Legal 500 UK, our Oil and Gas, Shipping and International Arbitration practices were ranked, with Glenn Kangisser and Andreas Silcher being recognised.



Testimonials:

“Exceptional capability and knowledge of upstream energy sector law in support of operations and commercial activities. Exceptional quality of legal advice and support provided.” - Energy

“Haynes Boone’s Oil and Gas team in the UK has a deep understanding of the legal, commercial and practical issues involved in upstream and downstream transactions.”

- Oil and Gas

“Excellent offshore and shipbuilding capability.”

[Chambers UK 2024](#)

In Chambers UK, our Shipping Practice Group was ranked in Band 2 (up from Band 3 last year), with William Cecil, Andreas Silcher and Simon Curtis being recognised. One of the client testimonials said, “They give precise and to-the-point advice. They have a very good commercial skill and knowledge, which enables them to get straight to the point and not waste time.”



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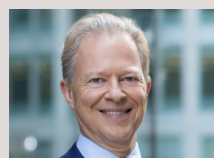
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LONDON PROGRAMMES



LONDON TRAINEE RECRUITMENT



The London office of Haynes Boone is fully committed to providing high-quality training and support to our trainees. We will provide four seats of training in the litigation/arbitration group and the non-contentious group. Trainees in those seats will work with different teams across the range of the firm's practice areas within the relevant group during each seat.

[Life as a Haynes Boone Trainee](#)

From joining Haynes Boone as trainees to their experience as fully qualified lawyers, London Associates Christopher Orford, Kayley Rousell and Tenzin Woden answer questions about their growing legal careers.

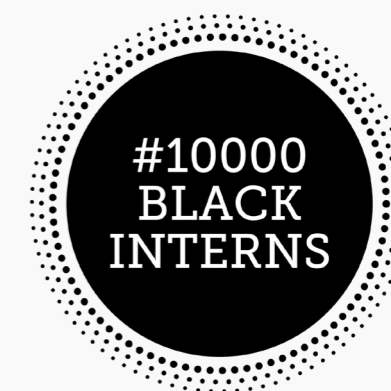
November 13, 2024

[Read more here](#)

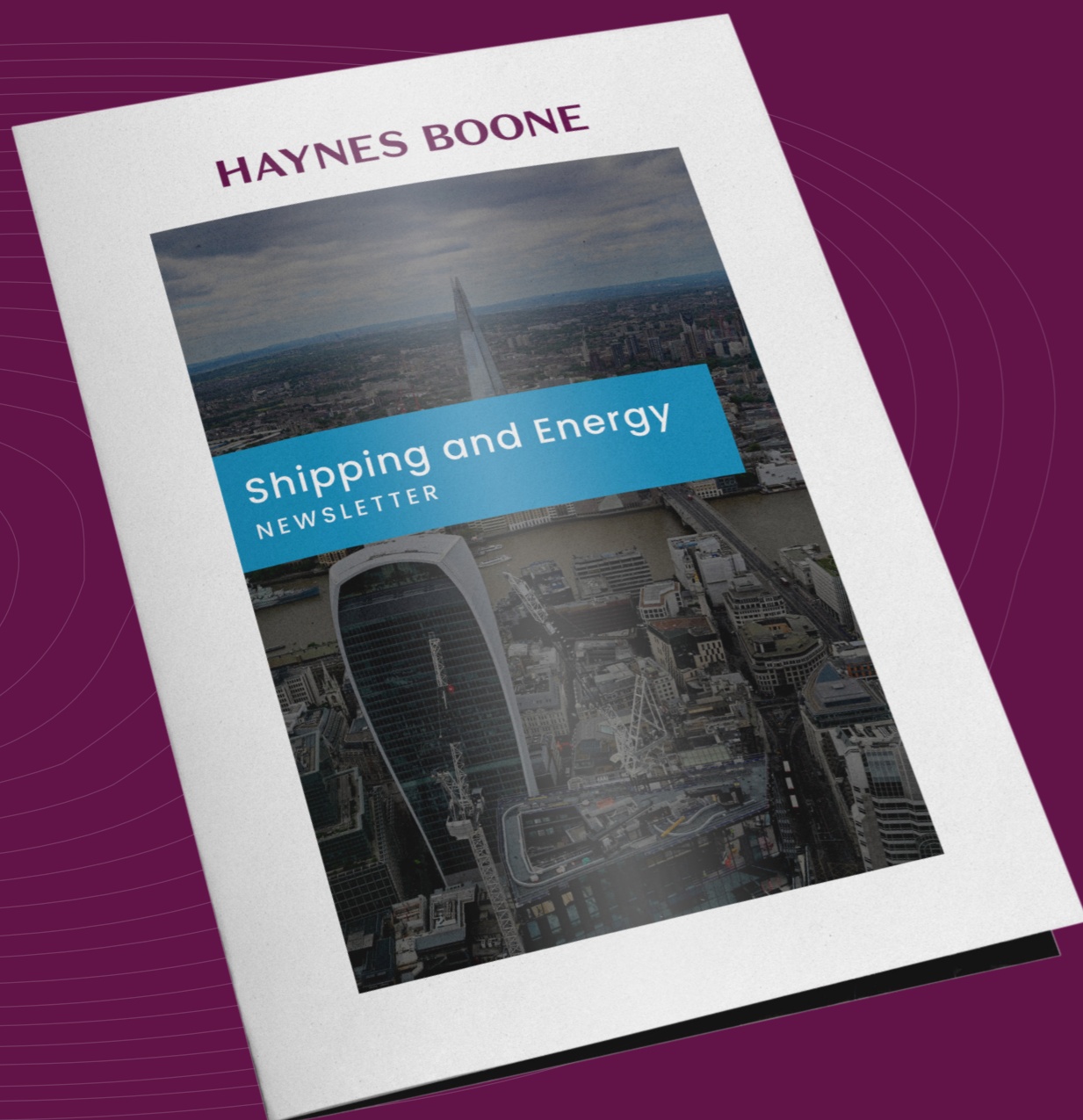
[#10000 Black Interns Programme](#)

Haynes Boone is proud to be partnered with the #10000 Black Interns Programme, which seeks to offer invaluable experiences through internships with firms from 25-plus sectors. Applications for the Summer 2026 Internship will open later this autumn.

[Read more here](#)



2024 NEWSLETTERS



If you would like to read our newsletters from 2024, please click on the relevant newsletter below:

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June 2024 [Shipping and Energy Newsletter](#)

September 2024 [Shipping and Energy Newsletter](#)

December 2024 [Shipping and Energy Newsletter](#)

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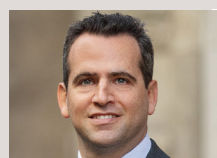
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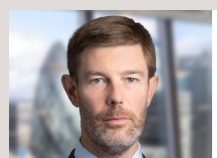
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