

**Legal, Contracts, Insurance & Compliance Committee**

Held on 22<sup>nd</sup> February 2024 from 13:30 hours by videoconference

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*Those present:*

Nathalie Louys	Subsea 7	Chair
Maggie Hickland	Allseas	Vice-Chair
Gert-Jan Gooszen	Boskalis	
Koen De Vylder	DEME	
Amber Oostvogels	DEME	
Philippe Van Liefferinge	Jan de Nul NV	
Claire Bromley	Subsea 7	
Andrew Hayward	Subsea 7	
Tomas Bille	TechnipFMC	
Kees de Looff	Van Oord	
Margaret Fitzgerald	IMCA	Secretary
Iain Grainger	IMCA	CEO
Jim Cullen (Guest)	IMCA	Technical Director

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**1.0 WELCOME, INTRODUCTION OF MEMBERS AND APOLOGIES FOR ABSENCE**

1.1 The Chair, Nathalie Louys, welcomed members to the meeting.

1.2 Apologies for absence were received from, , Annabelle Vos – Fugro, Sylvia de Rooij – Heerema Marine Contractors and Paolo Marcarini – Saipem.

**2.0 COMPETITION LAW COMPLIANCE POLICY**

2.1 Nathalie Louys drew attention to the fact that all meetings open with a reminder about IMCA's Competition Law Compliance Policy (CLCP), a copy of which is available on IMCA's website.

2.2 Nathalie Louys advised the Committee that IMCA's CLCP is due for review and that currently IMCA is trying to source a suitable lawyer who can assist with this. It has been recognised that it is particularly important for the policy to be reviewed as IMCA becomes more involved in external events, where commercial sensitivities may be a factor. There is also a plan to ensure that all IMCA staff are suitably trained to ensure they are aware of how competition law impacts upon them and IMCA as a trade association.

2.3 The Committee agreed that a small group should be formed to assist with this. Since Annabel Vos and Paolo Marcarini were not present at the meeting they will also be invited to participate.

**IMCA's By-laws**

2.4 Jim Cullen, who was attending the meeting as a guest, advised the Committee that IMCA's by-laws were being updated and had been reviewed by Simon Moore of Adams & Moore before final approval by the Board.

- 2.5 Nathalie Louys requested that, as Head of Legal, Margaret Fitzgerald should be kept in the loop and asked to review the final document before it is published.

**Action: Iain Grainger/Margaret Fitzgerald**

### **3.0 WORK PROGRAMME**

#### **3.1 LCIC Seminar 6<sup>th</sup> December 2023 – Wash up**

- 3.1.1 The general consensus was that the Seminar was a great success with over 100 people attending including almost all of the Committee members. Iain Grainger gave the keynote address and Maggie Hickland, Sylvia de Rooij, Amber Oostvogels and Kees de Looff presented together with Mary Anne Roff of Seaway 7.
- 3.1.2 The new T&I Contract launched and was a major focal point for some excellent discussions around finding solutions to the challenges faced in offshore wind contracting. Maggie Hickland highlighted the fact that a lot of the day focussed on the interaction between contracts and insurance, a relationship which is very important in the context of considering how contract risks are managed and how insurance is purchased so IMCA needs to keep focussing on it.
- 3.1.3 While it was recognised that a few clients attended, most notably Corio and EDF, the Committee recognised that in future, wider client participation is needed from the likes of RWE and Orsted although Nathalie Louys reminded the Committee that clients have not attended past IMCA events unless they were invited as guests or speakers.
- 3.1.4 Philippe Van Liefferinge considered that the timing of the event was very good because currently all parties are suffering so it was timely in sharing IMCA's message with the market.
- 3.1.5 Kees de Looff reported that he has been recommending IMCA's Renewables Contracting Principles and T&I Contract to clients and while some of his comments have landed, he has been pushed back on the contract by 2 clients because no employers had been involved in its' drafting. Kees suggested that in developing any future revision(s) it might be worth considering inviting employers, law makers and governments to join the process.
- 3.1.6 Tomas Bille commented that it is difficult to push a contract which is perceived to be biased towards the contractor. He advised that in Norway TechnipFMC has engaged countrywide with the Government, lenders, utilities companies, and insurance companies to work together to find a template for offshore wind which can be universally accepted.
- 3.1.7 Maggie Hickland informed the Committee that Allseas had managed to use the IMCA Contract on a fairly major project with only modest changes.
- 3.1.8 Nathalie Louys reminded the Committee that it had been clear that 'IMCA will not draft an EPIC lump sum turn key contract' and that this remains a key message to the market.
- 3.1.9 Nathalie Louys pointed out that, in developing the Contract, the Committee had recognised that any party using it will amend it in accordance with their own contracting terms and conditions. She advised that any member having success in getting a client to accept it as a starting point should be celebrated. Members were requested to feed back to IMCA on their experience with the contract.
- 3.1.10 Claire Bromley raised an important issue for consideration regarding why IMCA would want to bring in the views of external stakeholders since the work being carried out by IMCA is for contractors.

#### **Update from the CEO on IMCA activities to promote the Contracting Principles and T&I Contract**

- 3.1.11 Iain Grainger provided an update on work he has been doing to promote IMCA's Renewables Contracting Principles and the new T&I Contract.

- 3.1.12 Iain informed the Committee that he had attended the WFOW event in Barcelona and an event in Houston where he had presented the new T&I Contract and had received great feedback after both. Iain will continue to support the Committee's work by promoting the roll out of both the Renewables Contracting Principles and the T&I contract at events he attends throughout 2024.
- 3.1.13 Iain Grainger advised the Committee that IMCA is trying to get one or more developers to provide feedback on the new T&I contract even if they do not adopt it and that Iberdrola is currently reviewing it. It was noted that Tim Pick has been in contact with Orsted and is planning to speak to the legal team within Scottish Power. Iain also advised that IMCA has been in contact with Green Giraffe, which brokers deals between developers and lenders. Further updates will be provided to the Committee in due course.

**Action: Iain Grainger**

### 3.2 Compliance Work

- 3.2.1 The Committee recalled that it had previously established a Compliance Working Group under its' auspices, chaired by Andrew Hayward, Subsea 7's Chief Ethics & Compliance Officer who was in attendance.
- 3.2.2 Andrew advised the Committee that in 2023, the Working Group had agreed to undertake a review of IMCA's Competition Law Compliance Policy (see paragraph 2.2 above) and develop Guidance on two issues, one on Anti-Bribery, Anti-Corruption (ABAC) and one on Human Rights. Andrew drew attention to the fact that the Working Group had considered whether a common approach to assurance and to ABAC would be beneficial (i.e. collective action) so that every company does not have to be audited by every company. However, the work was not completed due to lack of engagement by members of the Working Group. It was therefore important for the Committee to consider whether and if so, how, to take this forward in 2024.
- 3.2.3 Nathalie Louys drew attention to the fact that this item has been included on the agenda to seek the Committee's views on how to proceed, recognising that regulatory issues such as the Corporate Sustainability Reporting Directive (CSRD) and Corporate Sustainability Due Diligence (CSDD) will affect members and the Committee had previously agreed that it would produce some guidance on these for the wider IMCA membership.
- 3.2.4 Maggie Hickland advised the Committee that she agreed with Andrew Hayward that we need to reduce the workload on members in this area. She highlighted the fact that clients tend to push their Due Diligence procedures down their supply chain and considered the goal of having a more unified approach would be welcomed although achieving it would be difficult.
- 3.2.5 Andrew Hayward advised that this is primarily an advocacy issue and questioned whether the value proposition in undertaking any work in this area would result in a win for IMCA with clients and the supply chain. He advised the Committee that the Working Group had previously considered developing a survey for the wider IMCA membership to assess what they considered would be useful if terms of business ethics and human rights.
- 3.2.6 Nathalie Louys referred to the ISO Standard 37001 on Anti-bribery management systems, which specifies requirements and provides guidance for establishing, implementing, maintaining and improving an anti-bribery management system which can be independent of, or integrated into, an overall management system. Andrew Hayward advised that a small number of oil companies, including ENI, are taking the lead on ISO 37001. It was noted that some IMCA members were also becoming ISO 37001 certified including Allseas Saipem, Subsea 7 and Van Oord.
- 3.2.7 Nathalie asked the Committee to consider whether it would see any benefit from ISO certification in this area and reminded members that the LCIC Committee is not only working for the Committee itself but also for smaller members. Feedback on this issue to be provided to Margaret Fitzgerald.

**Action: Andrew Hayward/Margaret Fitzgerald**

### 3.3 Review of the 2023 Objectives/Setting 2024 Objectives

3.3.1 The Committee recalled that it's Objectives for 2023 were as follows:

1. Support the roll-out of the Renewables Contracting Principles among key stakeholders throughout 2023.
2. Hold a successful event to promote the Renewables Contracting Principles.
3. Consider developing an offshore wind contract either in collaboration with another organisation or alone.
4. Establish a Working Group in 2023 to commence revision of other contracting principles (including the General Contracting Principles and several ROV contracting documents) in line with the Renewables Contracting Principles documents commencing with the General Contracting Principles, to be completed by the end of 2023.
5. Compliance Working Group – undertake a review of IMCA's Competition Law Compliance Policy and develop Guidance on two issues – one on Anti-Bribery, Anti-Corruption (ABAC) and one on Human Rights.
6. Insurance Working Group - continue to support the roll out of the Renewables Contracting Principles from an Insurance perspective and publish Insurance Guidance.
7. Follow and respond to new OMSA strategy on Jones Act/American Offshore Worker Fairness Act.

3.3.2 It was agreed that Objectives 1 – 2 had all been successfully achieved.

3.3.3 Objective 3 is addressed in paragraphs 3.3.8 to 3.3.14 below.

3.3.4 Objective 4 needs more time to be achieved and a review of the General Contracting Principles will be considered as part of the Objectives for 2024. With regard to the other Contracting Principles, legal representatives from those members particularly active in those committees may have to take the lead on this as the Committee is already fully committed with work.

3.3.5 Regarding Objective 5, the review of IMCA's Competition Law Compliance Policy has already been addressed (paragraphs 2.2 and 2.3) although it was recognised that the Committee has not achieved what it set out to do with regard to other compliance issues.

3.3.6 Objective 6 is addressed in paragraphs 3.3.15 to 3.3.18 below.

3.3.7 With regard to Objective 7 - US legislation - Nathalie Louys highlighted the fact that the LCIC Committee has taken the lead on making sure that the voice of IMCA and its' members is being heard and will continue to do so. Nathalie advised that Stephen McGuire, who previously worked with the Renewables Contracting Principles Working Group was willing to assist with this work and act as a liaison between the US and LCIC.

**Action: Nathalie Louys/Stephen McGuire**

#### **Finalisation of a new T&I Contract**

3.3.8 Nathalie Louys pointed out that this was a great step forward and commended the group who developed it for producing it in such a short period of time to enable it to be launched at the seminar in December.

3.3.9 Nathalie pointed out that the approach was to ensure the contract was not considered too complicated by the banks and the Committee agreed that it may need to produce guidance on this.

3.3.10 The Committee discussed whether it would be worth including some additional wording in any updated version reflecting the fact that most contracts are financed externally. It could also be worth recognising the fact that the US is now a major player in offshore wind and different approaches there might apply, e.g. what is the position of the knock-for-knock regime in the US?

- 3.3.11 Nathalie drew attention to the fact that IMCA has a North America Committee in which US lawyers participate so it could be added to the agenda of that Committee for its' consideration. Maggie Hickland questioned how specific we would want to make the template contract for any specific situation, e.g. the US market.
- 3.3.12 Gert-Jan referred to the fact that at the seminar there was a reference to having an updated version 2 this year and asked for this to be included on the Committee's objectives for 2024.
- 3.3.13 Kees de Looff informed the Committee that he is gathering input from clients which he would feed into any future revision of the contract. Kees advised that issues worth considering could include noise mitigation and cable issues while Koen de Vylder highlighted turbines, foundations and substations.
- 3.3.14 Nathalie Louys asked Gert-Jan to take the lead on proposing any changes to the wording of the contract.

**Action: Gert-Jan Gooszen**

#### **Insurance Working Group Update**

- 3.3.15 With regard to Objective 6 of the Committee's 2023 Objectives, the Insurance Working Group's Objectives were to continue to support the roll out of the Renewables Contracting Principles from an Insurance perspective and publish Insurance Guidance.
- 3.3.16 As the former Chair of the Working Group Claire Bromley advised the Committee that the Group had provided extensive input on Insurance into the Renewables Contracting Principles. The Group had also produced an Insurance Guidance document, taking the existing General Contracting Principles and overlaying Insurance requirements on to these. Claire pointed out that we only ever speak of the CAR policy but that this guidance document had looked at the minimum insurance requirements beyond that.
- 3.3.17 It was noted that this document had not been published as it had not yet been approved by the Committee. Nathalie Louys proposed that endorsement of these documents should be included as an item on the agenda of the Committee's next meeting and requested that the documents be circulated for review in advance of that meeting.
- 3.3.18 Claire Bromley suggested that the Committee could consider tasking the Insurance experts to produce another document on the minimum insurance requirements which apply to the General Contracting principles and that this could be one of the objectives for 2024.

**Action: Insurance experts**

#### **2024 Objectives**

- 3.3.19 The Committee reviewed the list of tasks before it and were asked to consider what they would wish to see the Committee set as its' Objectives for this year. The Objectives will be further discussed at the Committee's next meeting and then formalised at the General Counsel dinner which will be organised as soon as possible.

**Action: Committee members**

#### **3.4 Update on Offshore Wind Initiatives**

- 3.4.1 The Committee was advised that 3 different initiatives were underway in which IMCA/IMCA members were either participating or invited to participate in.
- 3.4.2 **FIDIC**  
The Committee recalled that FIDIC was developing an offshore wind contract and Koen de Vylder was participating in this work on behalf of DEME rather than IMCA.



3.4.3 Koen provided a brief update to the Committee to the extent that he was able to. It was noted that 10 participants were involved in this work including Orsted, Iberdrola, Hogan Lovells, Bird & Bird and Cadeler and that since July three activities had been undertaken:

1. A scoping exercise – still ongoing
2. Benchmarking against LOGIC – still ongoing
3. Development of Heads of Term – within which the position of engineer has been proposed to be removed and the Marine Warranty Surveyor added, taking into account IMCA's experience

3.4.4 Koen advised that 3 documents (A draft, B draft and C draft) will be finalised by the end of the month which will then be presented to the FICIC Contracts Committee. He informed the Committee that FIDIC was working on the idea of 4 separate contracts but this is still confidential.

3.4.5 Koen also advised that he had shared IMCA's renewables Contracting Principles and T&I Contract with the FIDIC group.

3.4.6 Ian Grainger advised the Committee that he had been in touch with FIDIC to ensure that IMCA is part of the friendly review process any request for review will be channelled through Iain and expected that either the LCIC Committee itself or a subgroup of the LCIC Committee will conduct the review.

**Action: Koen de Vylder/Iain Grainger**

#### **World Forum Offshore Wind (WFO) Contract Standardization Committee (CSC)**

3.4.7 The Committee was informed that Koen de Vylder was also taking part in this initiative on behalf of DEMA and Margaret Fitzgerald on behalf of IMCA (i.e. the LCIC Committee).

3.4.8 Koen advised the Committee that the target of this initiative is not entirely clear but the Committee is developing Contracting Principles and the aim is to develop a procurement contract for offshore wind.

3.4.9 Koen and Margaret will keep the Committee updated on progress.

**Action: Koen de Vylder/Margaret Fitzgerald**

#### **BIMCO**

3.4.10 Margaret Fitzgerald informed the Committee that BIMCO has established a WINDSEACON subcommittee to develop a new charterparty for offshore wind and that she had been approached to be on the WINDSEACON Sounding Board. The idea is that BIMCO will seek feedback from the Committee either in written form or via a consultation/meeting to discuss and test the approach applied by the subcommittee, alignment of drafts with market standards and expectations and so forth. Margaret will update the Committee on how this develops in due course.

**Action: Margaret Fitzgerald**

#### **3.5 Marine Warranty Surveyor (MWS) issue**

3.5.1 The Committee was reminded that IMCA had been contacted by Captain Stephen Norman of DNV on behalf of the Society of Offshore Marine Warranty Surveyors (SOMWS) who raised some concerns with the way in which the MWS is represented in the Renewables Contracting Principles and the associated Guidance document.

3.5.2 It was agreed that Margaret Fitzgerald would schedule a meeting between interested members of the Committee and Captain Norman to discuss the concerns raised.

**Action: Margaret Fitzgerald**

**3.6 Possible LCIC event in 2024**

3.6.1 Due to time constraints the Committee agreed to discuss this at its next meeting.

**4.0 ANY OTHER BUSINESS**

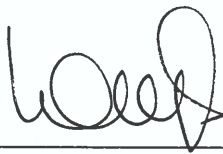
4.1 There were no other items of business.

**5.0 DATE OF NEXT MEETING**

The Committee agreed to hold its' next meeting at the end of March. Margaret Fitzgerald will identify a suitable date and will send an official calendar invitation.

**Action: Margaret Fitzgerald**

Nathalie LOVYS  
Signed as a true record

  
Name

April 2024  
Date

## **ANNEX 1**

### **AGENDA**

- 1.0 WELCOME, INTRODUCTION OF MEMBERS AND APOLOGIES FOR ABSENCE**
- 2.0 COMPETITION LAW COMPLIANCE POLICY**
- 3.0 WORK PROGRAMME**
  - 3.1 LCIC Seminar 6th December 2023 – Wash up
  - 3.2 Compliance work
  - 3.3 Review of 2023 Objectives/setting 2024 Objectives
  - 3.4 Update on offshore wind initiatives
  - 3.5 Marine Warranty Surveyor issue
  - 3.6 Possible LCIC event in 2024
- 4.0 ANY OTHER BUSINESS**
- 5.0 DATE OF NEXT MEETING**