

SINGAPORE ARBITRATION

The club defines 'contract work' as including materials, components, parts, machinery, fixtures, equipment and other property that is part of or is destined to become part of the project on which the entered ship is working, or is to be used up or consumed in the completion of the project.

The definition is designed to dovetail with the contractor all risk (CAR) policy wording most commonly used in the London market to cover construction risks for large offshore projects, since this will be the insurance policy that will cover the risk of loss or damage to these items, listed in the CAR policy as project property. As with the specialist operations exclusion, the description of 'contract work' is deliberately non-exhaustive in order to take account of the fact that each project will involve slightly different project property.

When negotiating contracts where the scope of work may include specialist operations, there are several points to be aware of. General terms such as 'project works', 'contract works', 'facilities' and 'pre-existing property', do not have any specific meaning in law. We recommend members should therefore ensure that these terms are defined, preferably in the contract by reference to the particular items or structures that are part of the project property, including any items on which they are working or which are in close proximity to the worksite.

It is recommended that members do not rely on a blanket exclusion of their contracting partner's property, as they may not own the property in question. Ideally, the oil company/ultimate client of the project should clearly fall within the definition of the 'company group' so as to ensure that the oil company's property and personnel, and those of their other contractors and subcontractors, are covered by the indemnities that are given under the contract. However, if this is not possible, it becomes particularly important to ensure that there is a clear indemnity provided for property on which members are installing, removing or working.

CONCLUSION

The type of works that would be considered to be specialist operations can never be exhaustively defined. Most offshore operations are unique to a particular project. We need to be able to take a view as to what types of work would be considered to be a specialist operation for the purposes of club cover in order to be able to offer maximum access to poolable cover and provide options for extending cover where this is not possible.

We frequently consider the point at which the specialist operation commences and whether property in the field would be considered to be 'contract works' or if it would be considered to be 'existing property'. This is important in order to be able to provide certainty between that which can be covered to the high limits of the pool and that which can be covered under a non-poolable extension to a fixed limit (which we can offer to a maximum of \$1bn).

The club is also able to advise what is not capable of being covered under a member's P&I policy. The member can then make an informed decision to either look for alternative insurances that are designed to deal with those risks or possibly retain the exposure against their own balance sheet.

If there is any doubt regarding the extent to which cover would respond to losses arising from a particular operation, members should contact the club for advice.



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In the October 2009 offshore special edition of the *Standard Bulletin*, we reviewed one vehicle for settling disputes in Singapore, namely the Singapore Chamber of Maritime Arbitration (SCMA).

In this article, we review the developments that have helped to position Singapore as a regional leader in arbitration. A developed legal infrastructure, modern facilities and focused support from all branches of the government and arbitration practitioners (local and foreign) are some of the key factors in Singapore becoming a regional arbitration centre.

The international arbitration regime in Singapore is governed by the International Arbitration Act (IAA), which gives the force of law to the UNCITRAL Model Law on International Commercial Arbitration (the Model Law) with some modifications. The IAA also gives effect to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention).

The domestic arbitration regime is governed by the Arbitration Act (AA). The AA was revised in 2002 so as to harmonise the laws on domestic and international arbitrations. The AA operates as the default regime if an arbitration in Singapore falls outside the reach of the IAA or parties opt out of the IAA. One difference between the IAA and the AA is that the AA permits referral of a question of law to be determined by the courts instead of the tribunal in the course of the arbitration.

Singapore demonstrates its support for arbitration in several ways, as illustrated by the tests developed on arbitration-related applications:

- stay of court actions for arbitration. This is compulsory for international arbitration. It is discretionary for domestic arbitration, but the burden is on the one resisting arbitration to demonstrate sufficient cause to disregard the arbitration agreement
- Singapore recognises the concept of 'kompetenz-kompetenz', i.e. the tribunal can rule on its own jurisdiction
- finality of the award. There is no right of appeal for international arbitration. There is a limited right of appeal in domestic arbitrations on a question of law, but the tribunal's decision must be obviously wrong or, on a point of general public importance, at least open to serious doubt. Setting aside or resisting enforcement is allowed only on specific grounds, consistent with

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international standards laid down in the Model Law and the New York Convention

- limited judicial intervention. The court will not usurp the role of the tribunal and will only intervene sparingly and in very narrow circumstances, for example where the arbitral tribunal has no jurisdiction to grant the relief sought (Court of Appeal decision in *NCC International AB v Alliance Concrete Singapore Pte Ltd* [2008] SGCA 5).

Where the dispute is an admiralty claim within the High Court (Admiralty Jurisdiction) Act, a ship arrest is permitted for the purpose of obtaining security for an arbitration, wherever the arbitration is seated. The plaintiff is entitled to such amount of security that would cover his reasonably best arguable case: *The Arktis Fighter* [2001] 3 SLR 394. A recent and comprehensive review of Singapore law on ship arrest can be found in the judgment of Belinda Ang J in *The Bunga Melati 5* [2011] SGHC 195.

In terms of supporting infrastructure, a dedicated arbitration centre was opened in 2010. Maxwell Chambers is an integrated dispute resolution centre with fully equipped hearing facilities. It is home to the major arbitration dispute and resolution institutions such as the Singapore International Arbitration Centre (SIAC) and the Singapore Chamber of Maritime Arbitration (SCMA) as well as organisations such as the Singapore Institute of Arbitrators (SIArb). Some leading London sets of counsel have also established Singapore offices at Maxwell Chambers.

The SIAC was established in 1991 and provides an institutional model for arbitration. A SIAC arbitration is an administered arbitration, similar to an ICC arbitration. As an institution helping to administer arbitrations, SIAC helps parties to appoint arbitrators when they cannot agree on an appointment and manage the financial and other practical aspects of the arbitration. The arbitrators' fees are fixed on a scale based on the sums in dispute. The Queen Mary survey has identified a shift in preference towards SIAC over other international institutions.

The SCMA was established in 2004 and is modelled on party autonomy. A SCMA arbitration is a non-administered arbitration (similar to a LMAA arbitration). It does not manage the arbitration so there is no management fee payable and parties are free to appoint whom they want to be arbitrators and to agree on the arbitrators' fees. Since our previous article on the SCMA in the 2009 *Offshore Bulletin*, the SCMA has seen growth in the volume and types of cases registered with the chamber, ranging from shipping to commodity disputes, with a significant proportion of cases involving non-Singapore claimants and/or respondents. Its panel of arbitrators has also grown and features many prominent local and international practitioners who have had to demonstrate their specialty, experience and expertise in the maritime sector before being granted admission. The SCMA has also reported a growing number of enquiries for applications by established overseas practitioners.

In conclusion, the arbitration scene in Singapore has seen significant and exciting developments in recent years. A recent and ground-breaking initiative was the introduction in January 2011 by the Singapore Maritime Foundation of the Singapore Sale Form (SSF) as an alternative to the widely used Norwegian Sale Form. An important feature of the SSF is the refinement and incorporation of many of the essential rider clauses to older printed forms into formal clauses within the SSF. A key aspect of the SSF is the inclusion of SCMA arbitration as the default arbitration clause with an option for contracting parties to choose other seats or models of arbitration. In May 2011, the Asian Shipowners Forum formally adopted the SSF as its official Sale and Purchase document for its members and usage of the SSF is on the rise. Developments such as this and the continued efforts and initiatives in the public and private sectors in Singapore to provide an arbitration-friendly jurisdiction have established and will continue to position Singapore as a premier centre for international arbitration.



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