

# WHAT IS A SPECIALIST OPERATION?



**John Croucher:** Underwriter  
**Telephone:** +44 20 3320 8879  
**E-mail:** john.croucher@ctcplc.com

The purpose of this article is to explain why the definition of a specialist operation is important and to provide some guidance as to the type of operations that may be considered 'specialist'.

It is the aim of the Standard Club to not only offer certainty with regard to the extent of insurance cover provided, but also to offer the widest possible cover for any particular operation, at the lowest sustainable cost. This is often achieved by providing members with access to poolable cover and non-pool covers where poolable cover will not respond.

## THE POOLING AGREEMENT

All International Group (IG) clubs are able to provide P&I cover to a very high limit, currently estimated to be \$6.9bn. The breadth and high limits of this cover is achieved by a claims-sharing agreement by the IG clubs through the pooling agreement. The pooling agreement allows clubs in the IG to mutually reinsure one another by sharing all liabilities between themselves in agreed proportions, in excess of \$8m per claim and up to \$60m.

As all IG clubs pool claims amongst themselves, it is important that all of the clubs provide similar cover for poolable risks and interpret exclusions to such cover in a consistent manner. Specialist operations are excluded from poolable P&I cover as the risks associated with such operations are considered to be too different from those of the majority of commercial shipowners. These risks are therefore non-poolable.

However, given the nature of offshore operations, and the very complex contractual arrangements that frequently apply to large projects, there are often both poolable and non-poolable risks in any operation. We must therefore be clear about where the distinction between the two is drawn in order to be able to achieve the certainty of cover we aim to provide. Failure to consider whether a risk is poolable or non-poolable may result in a member having either an uninsured loss or paying unnecessary insurance costs.

## SPECIALIST OPERATIONS DEFINED?

The nature of the pooling agreement is such that some of the exclusions to mutual cover could include any number of operations. This is particularly true when looking at the pooling agreement provisions relating to specialist operations, which provides a non-exhaustive list of activities that will prevent access to poolable cover for some, but not all, risks covered by the club.

Rule 5.11 defines the scope of the specialist operations exclusion as follows:

*'specialist operations [include]...but [are] not limited to dredging, blasting, pile-driving, well stimulation, cable or pipe laying, construction, installation or maintenance work, core sampling, depositing of spoil, professional oil spill response or professional oil spill response training and tank cleaning (other than on the ship), but excluding fire-fighting...'*

It is not possible to set out a definitive list of activities that would fall within the specialist operation exclusion; owing to the rate at which technology advances, new operations are undertaken and harsher environments are becoming workable. For example, vertical seismic profiling is becoming more common and decommissioning obligations are helping to develop new, innovative solutions to the removal of property that have not been seen previously. Neither of these operations is contained within the named activities in the exclusion; however, both are specialist operations.

## CLARITY AND CERTAINTY

The IG's role extends beyond the purchase of reinsurance. It has an equally important role as a forum for discussion and the exchange of information. The subcommittees within the group are the vehicle for such discussions and the specialist craft subcommittee has often been asked to consider whether a particular operation is poolable or falls within the specialist operations exclusion. However, while it is undoubtedly helpful to have as a point of reference, each contract, operation and project is unique, and the club must decide whether a particular activity falls within the exclusion.

An example, is anchor-handling operations. Picking up a mooring line of a drilling unit in the middle of a developed offshore field, running the anchor out and repositioning it, may appear to be a clear case of work that would fall within the scope of the specialist operations exclusion. However, this is not the case. The IG has taken the view that this type of operation, to assist in the navigation of another unit, is not a specialist operation and provided a member contracts on knock-for-knock terms or on a fault-based allocation of liability, then poolable cover remains unprejudiced.

While traditional anchor-handling activities remain poolable, this does not mean that all operations that modern Anchor Handling Tugs (AHTs) are capable of have the benefit of poolable cover. For example, work carried out by an AHT may include the installation of anchors and anchor wires on the field prior to the arrival of, for example, an FPSO and the commencement of the anchor-handling operation. Such activities are considered by the IG to be specialist operations in their own right and therefore the liabilities that arise during the course of the installation, either directly or under contract, must be viewed in light of the exclusion.

Likewise, the carriage of property to be installed, such as anchors and anchor wires, would not be considered to be cargo for the purposes of cover under rule 3.13. During carriage of such property, we can extend cover to include:

- (a) a liability incurred in respect of damage to the property itself, where the member has given indemnities in respect of such damage. Such indemnities should be approved by the club or
- (b) a liability incurred in respect of loss of or damage to third party property arising out of carriage of the anchors and anchor wires, for example if they were dropped on loading, causing damage to a berth.

We cannot cover both types of liability arising from the carriage, as we are either treating the property as third-party equipment in respect of which we can cover liabilities for loss or damage, or we can treat the equipment as part of the entered ship and cover liabilities that arise as a result.

## CONTRACT WORKS

Following on from the above example, during installation of the anchors and anchor wires, we would not cover loss of or damage to the property itself or liabilities that arise from it, as such liabilities would be excluded under the contract work proviso to the specialist operations exclusion, under rule 5.11(3).

# 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.



**Samantha Lee:** Claims Director  
Telephone: +65 6506 2857  
E-mail: [samantha.lee@ctcplc.com](mailto:samantha.lee@ctcplc.com)



**Chan Leng Sun, SC:** Principal  
Baker & McKenzie  
Wong & Leow  
Telephone: +65 6338 1888  
E-mail: [leng.sun.chan@bakermckenzie.com](mailto:leng.sun.chan@bakermckenzie.com)

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

CONTINUED ON NEXT PAGE