Introduction and assumptions for the answers:

Using the definition from CMI[1], a Mobile Offshore Renewable Unit (MORU) is a floating mobile structure designed to harness renewable energy sources such as wind, waves, and tidal energy. For the purposes of the following answers, we assume that MORUs lack their own propulsion. A different assumption could alter our responses.

Given the absence of specific regulations for MORUs in Brazilian law, the following answers are mostly based on an analogical interpretation of the existing rules applicable to vessels, as outlined by the Brazilian Maritime Authority in the "NORMAM" guidelines[2]. However, it must be kept in mind that NORMAMs are guidelines dealing only with safety of navigation. Other material legal purposes such as registration, taxation etc are not comprised in NORMAM's scope.

As a general rule, mobile structures are classified as vessels under "NORMAM 201" if they fly the Brazilian flag, or under "NORMAM 203" if they fly a foreign flag. Additionally, these structures can also be categorized as installations used in construction work and related activities within Brazilian jurisdictional waters, as per NORMAM 303.

However, fixed structures cannot be classified as vessels. According to the NORMAM guidelines, fixed structures are used solely for construction work at sea and may be treated as vessels only during their transportation to the installation site (which we are assuming to be outside of the scope of these questions).

Questions related to ownership and other property interests in MORUs

I. Treatment of Domestic MORUs as property

[1] Extracted from the First questionnaire from the CMI Mobile Offshore Renewables Unit International Working Group Fall 2024

[2] "NORMAM" stands for a series of rules published by Brazilian Maritime Authority and available at: https://www.marinha.mil.br/dpc/normas-autoridade-maritima-brasileira

1. Would the courts in your jurisdiction, recognize any (or all) of the categories of MORU as a “vessel” or “ship” or other “marine equipment” or other special type of property? If so, please explain with reference to authorities.

We have not identified any court decision specifically addressing the classification of Mobile Offshore Renewable Units (MORUs) in Brazil.

a) Would the courts in your jurisdiction recognize any of the categories of MORU as a “vessel” or “ship” if it were equipped with an integrated dynamic positioning or other station-keeping system, (including any automated system, or remotely or autonomously directed system)?

It is difficult to predict how courts would respond, as there are no existing precedents.

2. Is it possible in your jurisdiction to record ownership interests in any (or all) of the categories of MORU in a public register?

In Brazil, if a MORU is classified as a vessel it would be possible to record ownership interests in a public register.

However, it is still uncertain that MORUs will be recognized as vessels or ships under Brazilian law for registrations purposes. If MORUs are classified as vessels, then the provisions for the registration of maritime property outlined in Law No. 7.652/88 ("Maritime Property Law") would apply. But this far there is no court judgment nor decision by the Brazilian Registry based on Law No. 7.652/88 ("Maritime Property Law") on whether or not MORUs are vessels.

a) If so, would it be registered as a “vessel” or “ship” or other “marine equipment” or other special type of property? If so, please explain with reference to authorities.

Brazilian law does not make this type of distinction (i.e. vessel/ship x marine equipment) for registration purposes. Law No. 7.652/88 ("Maritime Property Law") allows registration of vessels/ships only in the Brazilian Registry, which

is the Brazilian Maritime Tribunal. Marine equipment is not contemplated as registrable.

b) If so, would it be registered in your jurisdiction's public register of ships, or in another public register?

Considering the classification of MORUs as vessels, they could only be registered in our public register of ships (the Brazilian Maritime Tribunal) in line with Law No. 7.652/88 ("Maritime Property Law").

c) If it is registered in your jurisdiction (whether as a "vessel" or "ship" or other "marine equipment" or other special type of property), would it be entitled to fly the flag of your jurisdiction and be deemed to have that nationality? If so, please explain with reference to authorities.

If a MORU were registered in the Brazilian Registry as a vessel/ship, it would be entitled to fly the Brazilian flag and be deemed to have Brazilian nationality, according to Law No. 7.652/88 ("Maritime Property Law").

3. Assuming that a MORU is the subject of leases, subleases, or charters (including demise charters) or sub-charters in your jurisdiction, is it possible to record such lease interests in any (or all) of the categories of MORU in a public register in your jurisdiction? If so, please describe. If so, please also describe the procedure to file such agreements or notice thereof.

If a MORU can be registered in the Brazilian Registry of Ships (the Brazilian Maritime Tribunal) then it will be possible to record liens and encumbrances on a MORU. An application to that end with supporting documentation on the creation of the lien/encumbrance will have to be filed with the Maritime Tribunal.

If MORUs will not be treated as vessels/ships, then liens/encumbrances will need to be legally adjusted to fit the Brazilian legal framework for mobile property other than vessels/ships and the document creating such lien/encumbrance will be registrable in ordinary Registers for Titles and Documents. Again registration will be possible through an application with the proper supporting documentation.

4. In your jurisdiction, is the acceptance by a registrar or other governmental body of a MORU (or type of MORU) as a “ship” or “vessel” or equivalent term dispositive of its legal status as a “ship” or “vessel” or equivalent term under your law for purposes other than registration under domestic law?

The legal status of a MORU is determined by legislation, not by its registration. If a MORU is not legally recognized as a vessel, the registry will refuse to register it as such.

5. Is it possible in your jurisdiction to record liens, maritime liens, claims, encumbrances (e.g. mortgages or hypotheques) against any such category of MORU in a public register? If so, please explain details and limitations on such register.

If a Brazilian MORU is considered a Brazilian vessel/ship, then liens, maritime liens, claims, encumbrances (e.g. mortgages or hypotheques) will be registrable in the Brazilian Registry of Ships (the Maritime Tribunal).

If Brazilian MORUs will not be considered as vessels/ships, then ordinary registries (Registry of Titles and Documents) will be in charge of registration of liens, maritime liens, claims, encumbrances (e.g. mortgages or hypotheques).

If a MORU flies a foreign flag, the liens and encumbrances must be registered in the foreign registry of its flag.

6. Is there any priority given to a registered creditor in such property in your jurisdiction? If so, please explain.

Brazilian Commercial Code establishes certain privileged claims which create a tacit (statutory) mortgage on vessels, according to articles 470, 471 and 474, such as, for example, such as: (i) wages due for services rendered on the ship; (ii) all navigation fees and taxes; (iii) expenses incurred for the custody and conservation of the ship; (iv) crew salaries; (v) the unpaid purchase price of the ship; (vi) debts arising from the ship construction contract, for a period of 3 (three) years from the day on which the construction is completed; (vii) expenses for repairing the ship and her equipment, for the last 2 (two) years,

starting from the day on which the repair was completed – provided that such debts have been registered in good time and their amounts have been entered in the vessel's register.

It is important to note also that Law No. 11.101/2005 (as amended by Law No. 14.112/2020), which regulates judicial ad extrajudicial reorganizations and bankruptcy of a Brazilian company, establishes that claims with special or general privileges under other rules shall now be classified as unsecured claims. In view of that it may be controversial whether or not privileged maritime liens under the Brazilian Commercial Code shall be now also classified as unsecured claims for reorganization and bankruptcy purposes.

II. Treatment of Foreign MORUs as property

7. Does your jurisdiction recognize ownership of any such property (i.e. any category of MORU) as evidenced by an entry in a public register of another jurisdiction?

Brazilian law recognizes ownership of vessels – category in which MORUs may or may not be included in the future – as evidenced by an entry in a public register of another jurisdiction. This is because Brazil is a signatory to and has incorporated the "Bustamante Code" (through Federal Decree No. 18871/1929), according to which the registration of ownership of a vessel must follow the law of her flag.

8. If:

i a MORU (or any type thereof) is categorized as a "vessel" or "ship" or other "marine equipment" or other special type of property in another jurisdiction and is registered and/or flagged as such in that jurisdiction, BUT

ii the MORU would not be considered a "vessel" or "ship" under the domestic laws of your jurisdiction,

would the courts or relevant authorities in your jurisdiction nonetheless treat the foreign-registered MORU as a "vessel" or "ship" for:

a) purposes of arrest of the MORU?

We have not identified any judicial decision regarding MORUs specifically.

Considering the current state of Brazilian law we think that court in the Brazilian jurisdiction would consider the arrest application regardless of the categorization of a MORU as vessel/ship or otherwise, according to the relevant provisions set forth by Brazilian Civil Procedural Code ("CPC"). In this sense, CPC provides for the possibility to apply for injunctions to seize any assets, including but not limited to the arrest of a vessel. The legal requirements to obtain such injunctions are: (i) probability of a good substantive right (*fumus boni iuris*) and (ii) an element of urgency (*periculum in mora*).

b) purposes of foreclosure on a mortgage / hypothecation of the MORU?

We have not identified any judicial decision regarding MORUs specifically.

Nonetheless, Brazil is a signatory of the International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgage, signed at Brussels on April 10th, 1926 and the Convention on Private International Law, signed at Havana on February 20th, 1928 ("Bustamante Code") that ruled about the maritime mortgage and the secured guarantees constituted in accordance with the law of the flag of origin and recognizes extraterritorial to foreign mortgages.

In view of that we have a precedent from the Superior Court of Justice ("STJ"), the highest Court of the land in the matter of federal law concerning the arrest of an FPSO due to foreclosure on a mortgage. It was the case of the FPSO OSX 3 (Special Appeal No. 1,705,222/SP - "REsp 1.705.222"), where the extraterritorial effects of a foreign mortgage and the possibility of the FPSO its arrest/foreclosure in Brazil were recognized by the STJ.

c) purposes of enforcement of maritime liens on the MORU?

We have not identified any judicial decision regarding MORUs specifically.

However, in line with the previous response, Brazilian courts or relevant authorities would likely treat a foreign-registered MORU as a vessel for the purpose of enforcing maritime liens, even if it is not classified as a "vessel" or "ship" under domestic Brazilian law. This conclusion is consistent with the principles established by the Superior Court of Justice (STJ) in its ruling on REsp 1.705.222.

d) any or all other purposes?

We have not identified any relevant additional purposes regarding this matter, other than as already discussed herein.

In the alternative, would your courts in such cases decline to enforce an asserted claim or mortgage if the (foreign) MORU is not recognized as a vessel or ship in your jurisdiction?

According to rules on conflict of laws prevailing in Brazil, Brazilian courts shall have jurisdiction whenever the defendant is domiciled in Brazil, the obligation has to be performed in Brazil, or the parties have agreed voluntarily to submit to Brazilian jurisdiction.

Therefore, the legal criteria in the circumstances for the Brazilian Courts to decline jurisdiction would not involve whether a MORU is deemed to be a foreign vessel/ship or not.

9. Would your jurisdiction accord the same priority of lienors and recorded creditors of a foreign-registered MORU as such lienors and creditors would have in the jurisdiction where the MORU was originally recorded or registered?

We lack court precedents in this regard even in respect of marine properties other than MORUs (like oil platforms, FPSOs, FSOs).

Further, local Courts usually apply domestic law when it comes to disputes on properties that are located in Brazil.

Thus, uncertainty in respect of your question is quite significant. What we may say is that the possibility of application of Brazilian law rather than the law of the jurisdiction where the MORU was originally recorded or registered will exist.

a) If your jurisdiction is party to the International Convention for the Unification of Certain Rules of Law relating to Maritime Liens and Mortgages 1926 or the International Convention on Maritime Liens and Mortgages 1993, would your jurisdiction recognize a MORU as a “vessel” or “sea-going vessel” (respectively) for purposes of that Convention?

There is no precedent on this matter.

10. What law would your jurisdiction apply to, or what law would it consider to govern, a sale or a change of ownership of a foreign-registered MORU which is operated in the EEZ of your jurisdiction?

If a foreign-registered Mobile Offshore Renewable Unit (MORU) is considered a vessel in its country of origin and is duly registered with the competent authority there, the sale or change of ownership would be governed by the legislation of the vessel's country of origin (flag state). The change of ownership would be carried out under the jurisdiction of the competent authority of that flag state.

Would your answer vary (and if so, how would it vary) if the MORU was:

a) Foreign-owned but not registered, or

If it is not registered we assume that this is because the MORU is not considered vessel/ship in the foreign jurisdiction. This would cause the sale/change of ownership to be to be subject to the law of the place of the person who made the sale offer eventually accepted.

b) operated in the territorial sea of your jurisdiction?

No.

11. Are there any reported decisions in your jurisdiction which address the legal classification (as “ship”, “vessel” or other “marine equipment” or other special type of property) of:

a) MORUs (of any type); No.

b) Offshore wind turbines (fixed or floating); No.

c) Mobile Offshore Drilling Units (“MODUs”); No.

d) FSUs and FPSOs; No

If so, please attach copies.

Questions related to arrest

12. Would it be possible to arrest, seize, detain, or otherwise proceed *in rem* or otherwise against a MORU for a maritime claim in your jurisdiction (whether under domestic law or binding convention)?

We have not identified any legal case specifically related to MORUs.

However, based on general principles of Brazilian Procedural law we understand that it would be possible to arrest, seize, detain, or otherwise proceed in rem or otherwise against a MORU for a maritime claim in Brazilian jurisdiction. Please also refer to our comments above regarding arrest of foreign-flagged vessels in Brazil (item 8.ii.a)

a) If so, on what grounds?

Please refer to our comments above regarding arrest of Brazilian-vessels and foreign-flagged vessels in Brazil (item 8.ii.a).

b) Is the answer to this question determined by flag state law or the domestic maritime law of your jurisdiction?

Being arrest a procedural measure as a matter of Brazilian law, Brazilian law would apply.

13. Is it possible to arrest, seize, detain, or otherwise proceed against a MORU for ***non-***maritime claims in your jurisdiction?

Yes. Brazilian Procedural law allows arrest or similar measures against regardless of the maritime or non-maritime nature of the claim

14. If a MORU were arrested, seized, detained, etc. in your jurisdiction, would it be possible to obtain a release of the MORU from such arrest/detention on posting of an adequate security? If so, please provide authority.

Yes, the Brazilian Code of Civil Procedure (CPC) allows the release of any property under arrest if a substitute security is provided. Article 297 of the CPC grants to Courts wide discretion to establish adequate measures in terms of injunctions ("Art. 297. A judge may order the measures deemed necessary in order to enforce a provisional remedy" – free translation)

Questions related to limitations of liability

1. Assuming that a MORU was not used for the purpose of exploring or exploiting the natural resources of the sea-bed or the subsoil thereof (cf. Art. 15(5) of Convention on Limitations of Liability for Maritime Claims, 1976), would the owner or salvor of a MORU benefit in your jurisdiction from the limitations of liability found in the Limitations of Liability for Maritime Claims, 1976 and/or its Protocols ("LLMC 1976/1996/2012?")?

Brazil is not a party to the LLMC 1976/1996/2012 or its protocols.

2. Assuming that a MORU is used to provide electrical power to other types of floating units or fixed or subsea facilities which were themselves exploring or exploiting the natural resources of the sea-bed or the subsoil thereof (cf. Art. 15(5) of LLMC), would the owner or salvor of that MORU benefit in your jurisdiction from the limitations of liability found in LLMC 1976/1996/2012?

Since Brazil has not adopted the LLMC, there is no direct application of the limitations of liability therein.

3. Would a MORU benefit from any other (non-LLMC based) forms of limitations of liability under the domestic law of your jurisdiction? If so, please explain with reference to authorities.

No. Brazilian civil liability is governed by the principle of full reparation with just a few exceptions which, so far, do not seem to include MORUs.

Questions related to innocent passage and transit

1. Would a right of innocent passage be recognized in your jurisdiction for a foreign-registered MORU being towed through your jurisdiction's internal waters (cf. UNCLOS Art. 8(2))?

Most likely no, in line with article 18 of UNCLOS (as passage would then be through internal waters, not the territorial sea).

2. Would a right of innocent passage be recognized in your jurisdiction for a foreign-registered MORU being towed through your jurisdiction's territorial sea (cf. UNCLOS Art. 17, 24(1))? Would your jurisdiction recognize its own criminal jurisdiction on board a foreign-registered MORU passing through your jurisdiction's territorial sea other than in accordance with UNCLOS Art. 27?

Brazil would recognise the right of innocent passage in its territorial sea under UNCLOS Arts. 17 and 24, including for foreign-registered MORUs. Brazil would also recognize the right of innocent passage for a foreign-registered MORU being towed through our territorial sea in line with UNCLOS art. 27 and also in case of pollution incidents.

3. Would your jurisdiction recognize its own civil jurisdiction on board a foreign-registered MORU passing through your jurisdiction's territorial sea other than in accordance with UNCLOS Art. 28?

No, Brazil would not recognize its own civil jurisdiction on board a foreign-registered MORU passing through our territorial sea other than in accordance with UNCLOS Art. 28.

4. If there are straits used for international navigation in the waters adjacent to your jurisdiction, would a right of transit passage (or innocent passage) be recognized in

your jurisdiction for a foreign-registered MORU being towed through that strait (cf. UNCLOS Art. 38, 45)?

Not applicable.

5. If your jurisdiction is an archipelagic State (within the meaning of UNCLOS Art. 46), would a right of innocent passage be recognized in your jurisdiction for a foreign-registered MORU being towed through your jurisdiction's archipelagic waters (cf. UNCLOS Art. 52))?

Not applicable. Brazil is not an archipelagic state.

Question related to sovereign immunity and rights of owners or creditors to remove property from established MORU operations

1. In your jurisdiction, does the sovereign prohibit by law the arrest, repossession or seizure by a creditor of property under lease or contract with an organ of the state (such as a public utility)?

Under Brazilian law, property leased or contracted by the state may be immune from arrest or repossession if it serves a public utility purpose. This immunity is derived from the principle of administrative law that protects public goods and services (Art. 100, Civil Procedure Code). However, immunity is not absolute and does not apply in commercial disputes where the asset is not directly serving public interest.

2. In your jurisdiction, may the sovereign/state waive immunity by contract for the benefit of creditors or lienors seeking to recover leased property (e.g. a leased MORU) or damages in the event of a default by the sovereign or another responsible party under a contract or lease to produce or supply energy to a sovereign- or state-owned entity?

Brazil does not waive its sovereign rights and to immunity.