Replies to the First Questionnaire from the CMI MORU IWG

Institute of Maritime Law, Shanghai Maritime University

The Institute of Maritime Law at Shanghai Maritime University (henceforth referred to as the Institute) has been entrusted by the China Maritime Law Association to provide preliminary responses to the First Questionnaire from the CMI MORU IWG. The Institute's work is led by its Executive Director, Associate Professor Dr Rui ZHENG, and its Academic Secretary, Associate Professor Dr Siqi SUN.

The MORU issues are highly advanced, and the application of maritime law and general law to the MORU is uncertain at the current stage. Consequently, the following responses, provided by the Institute, cannot guarantee absolute precision.

Notwithstanding, these responses are the result of meticulous research carried out by Institute members and are intended to contribute to the research efforts of the CMI MORU IWG.

The Institute would like to express its sincere gratitude to the following experts for their invaluable advice and expertise in replying to this questionnaire:

1. **Professor Dr Wang XIN, School of Law, Anhui University, China**
2. **Ms Jing ZHOU, Maritime Safety Administration of the People's Republic of China, Jiangsu Province, China**
3. **Mr Yunfei HAN, Judicial Assistant, Shanghai Maritime Court, China**
4. **Ms Ran HE, PhD Candidate, Institute of Maritime Law, Korea University, South Korea.**

Questions related to ownership and other property interests in MORUs

Treatment of Domestic MORUs as property

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.

It is the Institute's opinion, based on a thorough review of the relevant legislation, that MORUs should be recognised as sea-going mobile units pursuant to *the Maritime Code of the People's Republic of China 1993* (hereinafter referred to as *the CMC 1993*). Article 3 (1) of *the CMC 1993* provides that: "Ship" as referred to in this Code means sea-going vessels and other mobile units, but does not include ships or craft to be used for military or public service purposes, nor small ships of less than 20 tons gross tonnage.

Given that MORUs do not possess the appearance and structural characteristics of a ship and are not registered as sea-going ships according to the current registration practice in China, they would not be considered sea-going ships. However, despite the absence of judicial precedent in this area, it is conceivable that MORUs could be classified as sea-going mobile units within the meaning of *the CMC 1993* for two reasons: first, the concept of "mobile units" is broad enough to encompass MORUs according to its ordinary meaning; secondly, neither "sea-going" nor "mobile" qualifications require the relevant units to be self-propelled. Consequently, it is plausible that MORUs fall within the purview of "ships" for the purpose of *the CMC 1993*.

It is also noteworthy that *the Maritime Traffic Safety Law 2021* and *the Coast Guard Law 2021*, in Articles 117 and 78 respectively, contain definitions of "ships" that are analogous to those set out in *the CMC 1993*. This renders MORU subject to the provisions of these two legislations.

1-1. 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)?

In consideration of the extensive definition of "ship" as outlined in the pertinent Chinese legislation cited above, MORU, equipped with an integrated dynamic positioning system or other station-keeping system (comprising any automated system or system directed remotely or autonomously), would nevertheless be classified as

"ships".

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 accordance with prevailing registration laws and practices in China, it is not possible to record ownership interests in a public register. Presently, Presently, registration authority in China registration authority in China does not register any "floating" units, and "floating" is an integral component of the MORU definition. Nevertheless, it is conceivable that the registration authority may revise its position on this issue in the future, and relevant research is currently being conducted.

2-1. 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.
2-2. If so, would it be registered in your jurisdiction's public register of ships, or in another public register?
2-3. 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.

In view of the foregoing response, it is unnecessary to reply to the above three questions.

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.

In accordance with the prevailing registration laws and practices in China, it is not possible to record such lease interests in a public register.

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?

Despite extensive research, no public news or record has been found that MORU is accepted by a registrar or other governmental body as a "ship" or "vessels" or an equivalent term that disposes of its legal status as a "ship" or "vessel" or an equivalent term under Chinese law for purposes other than registration.

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.

In accordance with the prevailing registration laws and practices in China, it is not possible to record liens, maritime liens, claims, encumbrances against MORU in a public register.

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

Despite the absence of an extant judicial practice, it is reasonable to hypothesise that a registered creditor will be accorded priority in the form of maritime lien in MORU, in accordance with the provisions of *the CMC 1993*, on the basis that MORU is categorised as a "ship" for the purposes of this legislation.

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?

Chinese law does not differentiate between domestic and foreign ships. Similarly, there is no reason to believe that China would not recognise ownership of a MORU, as evidenced by any entry in a public register of another jurisdiction.

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?
b. purposes of foreclosure on a mortgage / hypothecation of the MORU?
c. purposes of enforcement of maritime liens on the MORU?
d. any or all other purposes?
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?

As was established in the preceding analysis, the MORU would be considered a "ship" for the purpose of *the CMC 1993*. Furthermore, Chinese law does not differentiate

between domestic and foreign ships; consequently, a foreign MORU would be subject to arrest, foreclosure, enforcement of maritime liens and any other purposes pursuant to the CMC 1993 and other relevant laws.

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?

Yes. Chinese law does not treat the rights of lienors and recorded creditors differently depending upon the registration location of the MORU or the registration location of the rights.

9-1. 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?

China is not 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.

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?

Would your answer vary (and if so, how would it vary) if the MORU was:
a. Foreign-owned but not registered, or
b. operated in the territorial sea of your jurisdiction?

The response to these questions is contingent upon the prevailing legal framework as determined by private international law. The following provisions may be relevant:

Article 269 of *the CMC 1993* stipulates that: "the parties to a contract may choose the law applicable to such contract, unless the law provides otherwise. Where the parties to a contract have not made a choice, the law of the country having the closest connection with the contract shall apply". This signifies that the parties to a sales contract with a foreign-registered MORU as the subject-matter are at liberty to elect the applicable law (e.g. English law) to the contract. In the absence of such election, the closest connection principle of private international law will apply.

However, as was established in the preceding analysis, the MORU would be considered a "ship" for the purpose of *the CMC 1993*. Furthermore, Article 270 of *the CMC 1993* provides that: "the law of the flag State of the ship shall apply to the acquisition, transfer and extinction of the ownership of the ship." In the event of a

foreign MORU flying a foreign flag, the change of the ownership of this MORU will be governed by the law of the flag state.

In the absence of registration, it is likely that a foreign MORU would not be regarded as a "ship" for the purposes of *the CMC 1993*. Nevertheless, it would be categorised as movables under Chinese Law and the change of its ownership would be governed by Article 37 of *the Law of the People's Republic of China on Choice of Law for Foreign-related Civil Relationships 2010* would apply. The aforesaid provision stipulates that: "the parties concerned may choose the laws applicable to the right over the movables by agreement. If the parties do not choose, the laws at the locality of the movables when the legal facts take place shall apply."

It can be hypothesised that the outcome would persist in the event of MORU being operated within China's territorial sea.

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);
b. Offshore wind turbines (fixed or floating);
c. Mobile Offshore Drilling Units ("MODUs");
d. FSUs and FPSOs

If so, please attach copies.

Despite extensive research, no reported judicial decision in China has been found which addresses the legal classification of MORUs, fixed or floating offshore wind turbines, MODUs and FSUs and FPSOs.

Questions related to arrest

1. 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)?
   a. If so, on what grounds?
   b. Is the answer to this question determined by flag state law or the domestic maritime law of your jurisdiction?

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

3. 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?
   a. If so, please provide authority.

The aforesaid three questions are addressed together in the following manner.

Despite the absence of any extant court practice, there appears to be no legal impediment in China to the arrest of a MORU for a maritime claim under *the Maritime Procedure Law 1999* and for a non-maritime claim under *the Civil Procedure Law 2023*.

Article 21 of *the Maritime Procedure Law 1999* enumerates 22 types (not exhaustive) of maritime claims for which a ship may be arrested. *The Maritime Procedure Law 1999* itself does not define the term “ship”; however, if the same definition as set out in *the CMC 1993* is assumed, an application for arrest of a MORU may be made in respect of certain types of maritime claims. For example, these may include services rendered to a MORU for its operation, management, preservation or maintenance, or insurance premiums payable by or on behalf of the owner.

In the event that the MORU is not considered to be a “ship”, it may nevertheless be classified as a property and may be seized for the purpose of preservation in accordance with Article 103 of *the Civil Procedure Law 2023* in cases where the act of one of the parties or other reasons may render the enforcement of the judgement difficult or cause other damage to the party concerned.

In accordance with the stipulations set out in the Chinese legal system, the arrest of a MORU can be released if adequate security is provided. Article 107 of *the Civil Procedure Law 2023* elucidates this principle: in instances of property disputes where the Respondent provides security, the People’s Court is mandated to decree that the preservation should be released.

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?")?

Yes. China is a party to *the LLMC 1976*, however, the provisions of the LLMC 1976 are exclusively appliable to the Hong Kong Special Administrative Region. Nevertheless, Chapter XI of *the CMC 1993*, entitled "Limitation of Liability for Maritime Claims", was formulated with reference to *the LLMC 1976*. Article 204 stipulates that: "shipowners and salvors may limit their liability in accordance with the provisions of this Chapter for claims set out in Article 207 of this Code".

China is also a party to *the International Salvage Convention 1989*. Chapter IX of *the CMC 1993*, entitled "Salvage at Sea", was formulated with reference to this Convention. Article 173 stipulates that: "the provisions of this Chapter shall not apply to fixed or floating platforms or mobile offshore drilling units when such platforms or units are on location engaged in the exploration, exploitation or production of sea-bed mineral resources". Consequently, as long as a MORU is not used for the purpose of exploring or exploiting the natural resources of the sea-bed or the subsoil thereof, it would be capable of being saved for the purpose of *the CMC 1993*, and the salvors may limit their liability accordingly.

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?

The response to this question is congruent with the response to the preceding question.

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.

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))?

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))?
a. 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?
b. 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?

3. 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)?

4. 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))?

The aforesaid four questions are addressed together in the following manner.

China has ratified the United Nations Convention on the Law of the Sea (UNCLOS) and has reaffirmed that the provisions of the UNCLOS concerning innocent passage through the territorial sea shall not prejudice the right of a coastal state to request, in accordance with its domestic legislation, a foreign state to obtain advance approval from or give prior notification to the coastal state for the passage of its warships through the territorial sea of the coastal state.

Article 6 of *the Law of the People's Republic of China on the Territorial Sea and Contiguous Zone* (hereinafter referred to as *the Territorial Sea Law*) explicitly provides that "foreign non-military ships enjoy the right of innocent passage in the territorial sea of the People's Republic of China in accordance with the Law. The entry of foreign military ships into the territorial sea of China requires the approval of the Government of the China."

In order to address the issue of the right of innocent passage of a "foreign-registered

MORU being towed", it is necessary to first address the fundamental question of whether a "foreign-registered MORU" can be recognised as a ship, given that the right of innocent passage is only provided for ships. The term "ship" is understood to hold divergent meanings within the context of maritime law and the law of the sea. The definition of a "foreign-registered MORU" as "non-self-propelled" and its subsequent towing by a mother ship has led to the conclusion that it is controversial and inappropriate to recognise such a MORU as a ship entitled to claim the right of innocent passage in the context of the law of the sea. The argument is that, due to its towing and control by its mother ship, a MORU should be recognised as an extension of its mother ship. This would mean that its status would be partially reflected of that of its mother ship, rather than having its own fully independent status. Consequently, the question of the right of innocent passage of a "foreign-registered MORU being towed" may be rephrased as the question of whether the right of innocent passage of a "foreign-registered MORU being towed" by a mother ship should be recognised.

In considering the right of innocent passage of a "foreign-registered MORU being towed" by a mother ship through territorial waters, it is essential to take into account the status of both the MORU and the mother ship. In the event that the MORU is not for military purposes and the mother ship is a "foreign non-military ship", the right of innocent passage in the territorial sea of the People's Republic of China may be exercised by a foreign-registered MORU towed by a mother ship, in accordance with *the Territorial Sea Law*. Conversely, if the MORU is for military purposes or the mother ship is a "foreign military ship", the entry of such a ship into the territorial sea of China requires the approval of the Government of China.

In addition, it is understood that both criminal and civil jurisdiction on board a foreign-registered MORU and its mother ship are to be exercised by China in accordance with UNCLOS Arts. 27 and 28 in China's territorial sea.

Finally, in relation to the right of innocent passage of "a foreign-registered MORU being towed" by a mother ship through internal waters, straits and archipelagic waters, the rules of UNCLOS and other generally accepted international regulations and practices may be largely applicable. Despite extensive research, the Institute have not identified any different rules and specific requirements in the domestic laws of China.

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)?

Despite extensive research, no law has been identified in China with the aforesaid effect. Article 23 (3) of *the Maritime Procedure Law 1999* stipulates that "ships engaged in military or governmental services are not subject to arrest", but this provision may have no application in the MORU context since it is improbable for a MORU to be used for military or governmental purposes.

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?

Despite extensive research, no law has been identified in China with the aforesaid effect.