Mobile Offshore Renewables Unit
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**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.**

The Merchant Shipping Ordinance (Cap. 281) defines a "ship" as including "every description of vessel used in navigation," with emphasis on navigation being a key characteristic. The Ordinance further defines a "vessel" as including any ship or boat or any other description of vessel used in navigation. MORUs, being power generation units without self-propulsion capabilities, would likely fall outside this definition

MORUs would more likely be classified as offshore installations, similar to the treatment of fixed offshore platforms (note there is no single comprehensive regulation that specifically defines such platforms - various laws and regulations govern their operation and safety).

**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)?**

The addition of dynamic positioning or station-keeping systems would likely not change the classification of such MORUs because:
1. The primary purpose and function of the MORU remains power generation rather than navigation.
2. Station-keeping systems are intended to maintain position rather than facilitate navigation.
3. Hong Kong courts would likely view such systems as auxiliary equipment rather than features that transform the fundamental nature of the structure.

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

Currently, there is no specific public register in Hong Kong designated for recording ownership interests in MORUs. However, certain registration options might be available – see (a) below.

**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.**

Since MORUs would likely not qualify as "vessels" or "ships" under Hong Kong law, they cannot be registered under the Hong Kong Shipping Register. They would more likely be treated as general property or equipment, potentially registrable as:

- Equipment or machinery under corporate asset registries.
- Security interests under the Companies Registry (if owned by a Hong Kong company).

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

There is currently no specialised register for offshore installations or marine equipment in Hong Kong.

If the MORU is owned by a Hong Kong company, details of the MORU could be registered as:
- A corporate asset in annual returns
- A registrable charge under the Companies Ordinance (Cap. 622) if used as security

**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.**

As MORUs would not qualify for registration as vessels under the Hong Kong Shipping Register:

1. They would not be entitled to fly the Hong Kong flag;
2. They would not be deemed to have Hong Kong nationality as vessels; and

3. They would not receive the benefits and protections typically afforded to Hong Kong-flagged vessels.

The lack of a specific registration regime for MORUs in Hong Kong suggests a potential need for legislative reform to address this emerging technology, particularly as offshore renewable energy development increases in the region.

**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.**

No specific public register exists for recording MORU lease interests. Lease interests could potentially be recorded through:
- The Companies Registry if the MORU is owned by a Hong Kong company and the lease constitutes a registrable charge; or
- Private contractual arrangements without public registration

For registrable charges at the Companies Registry:
- File Form NM1 (for Hong Kong companies) within 1 month of creation
- Include details of the lease/charge arrangement
- Submit 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 acceptance of a MORU by a Hong Kong governmental body for registration purposes would NOT be dispositive of its legal status as a "ship" or "vessel" because different Hong Kong laws and regulations define "ship" and/or "vessel" slightly differently for their specific purposes. Further, Hong Kong courts would make independent determinations of an MORU's legal status based on the specific context and applicable law and consider the actual characteristics and use of the MORU rather than its registration status when applying relevant legal tests depending on

the specific issue before them.

**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.**

Traditional maritime liens would not be available, and no specialised register exists for MORU-specific encumbrances. Registration would follow general property security interest rules.

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

Priority for creditors would follow general Hong Kong property and corporate law principles:

For Registered Charges:
- Priority is generally determined by order of registration at Companies Registry.
- Fixed charges typically rank ahead of floating charges.
- Registration must occur within one month of creation to maintain priority.

Priority Rules:
- First in time registration generally has priority.
- Proper registration provides notice to subsequent creditors.
- Unregistered charges are void against liquidators and other creditors.
- No special maritime priority rules would apply.

Exceptions:
- Prior equitable interests may take priority in certain circumstances.
- Court orders may affect priority.
- Contractual subordination agreements between creditors are possible.

There is otherwise no maritime mortgage system available, no maritime lien priorities applicable and reliance on general corporate security principles will apply rather than specialised maritime rules

**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?**

Hong Kong courts generally recognise foreign ownership rights evidenced by public registers, based on principles of comity, recognition of foreign property rights and Hong Kong's common law tradition. However, such recognition would be subject to Hong Kong law and public policy, limited to ownership rights rather than extending to vessel status and would not automatic conferral of maritime law privileges.

**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 foreclosure on a mortgage / hypothecation of the MORU?**

In cases involving mortgage or hypothecation foreclosure, Hong Kong courts would likely give substantial weight to the foreign classification, particularly where the security interest was validly created under the law of the registration jurisdiction.

Key considerations would include:
- The validity of the security interest under the law of registration;
- The commercial expectations of the parties;
- The practical requirements for enforcement; and
- The protection of legitimate creditor interests.

**b. purposes of enforcement of maritime liens on the MORU?**

The enforcement of maritime liens presents particular challenges when dealing with foreign-registered MORUs. Hong Kong courts would likely adopt an approach that:
- Recognises validly created foreign maritime liens;

- Considers the nature of the underlying claim;
- Evaluates the appropriateness of maritime lien remedies; and
- Balances competing creditor interests.

The courts might recognise the foreign classification for maritime lien purposes where this promotes consistency in international maritime commerce and ensures effective enforcement of legitimate claims.

**c. 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?**

For other purposes, Hong Kong courts would likely maintain a flexible, context-specific approach. This might include recognition of the foreign classification for:
- Insurance purposes;
- Regulatory compliance;
- Environmental protection;
- Safety requirements; or
- Employment relationships.

In cases where the courts decline to recognise the foreign vessel classification, they would not necessarily refuse to enforce valid claims or mortgages. Instead, they would likely seek alternative legal bases for enforcement, such as general property law, commercial law principles and international private law.

The courts would likely focus on ensuring that legitimate commercial expectations are protected while maintaining consistency with Hong Kong's legal framework.

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

Hong Kong would likely not automatically apply foreign priority rules and are instead likely to apply Hong Kong priority rules for local enforcement, general conflict of laws principles and local insolvency and security interest rules.

**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?**

Hong Kong is not a party to either the 1926 or 1993 Maritime Liens Conventions.

**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?**

For a foreign-registered MORU operating in Hong Kong's EEZ, the law governing its sale or ownership change would typically be determined through a multi-faceted analysis. The courts would likely apply a combination of:
- The law of the place of the MORU's registration;
- The law governing the sale contract; and
- Mandatory rules of Hong Kong law where public policy requires.

The choice of law analysis would particularly consider the location of the MORU, the parties' chosen law in any sale agreement, and any mandatory local regulations affecting ownership transfer of energy-producing assets in Hong Kong waters.

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

**a. Foreign-owned but not registered,**

For unregistered MORUs, the absence of a clear registration jurisdiction would likely lead courts to place greater emphasis on the physical location of the MORU and the parties' chosen law in the sale documentation. Hong Kong courts would likely apply general principles of private international law, considering factors such as:
- The location of the MORU at the time of sale;
- The parties' residence or principal place of business;
- The intended operational jurisdiction of the MORU; and
- Any connecting factors to Hong Kong's jurisdiction.

**b. or operated in the territorial sea of your jurisdiction?**

The proximity to Hong Kong's jurisdiction would increase the likelihood of mandatory local law application, especially concerning regulatory compliance and public policy considerations. In all cases, the courts would seek to balance

international commercial practices with local regulatory requirements, ensuring that ownership transfers are both commercially effective and compliant with Hong Kong's legal framework for energy infrastructure operations in its waters.

**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 reported decisions directly addressing MORU classification. No specific legislative or judicial guidance exists.

**b. Offshore wind turbines (fixed or floating);**

Hong Kong courts have not yet produced significant reported decisions specifically addressing the legal classification of offshore wind turbines, whether fixed or floating. This reflects the relatively recent development of offshore wind energy in Hong Kong waters.

**c. Mobile Offshore Drilling Units ("MODUs");**

Hong Kong courts have not yet produced significant reported decisions specifically addressing mobile offshore drilling units.

**d. FSUs and FPSOs If so, please attach copies.**

Hong Kong courts have not yet produced significant reported decisions specifically addressing FSUs and FPSOs. One FSRU project is currently operating in Hong Kong waters as an LNG receiving terminal, however, given it is capable of navigation it is likely to be treated as a vessel.

**<u>Questions related to arrest</u>**

**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?**

Traditional maritime arrest is likely unavailable as MORUs would not qualify as "ships" under Hong Kong's High Court Ordinance (Cap. 4). Instead of maritime

arrest, alternative actions might include general contractual remedies, injunctions or commercial court proceedings.

Hong Kong domestic law would govern enforcement proceedings. Flag state law would be relevant only for ownership/registration evidence.

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

In Hong Kong, the ability to proceed against a MORU for non-maritime claims exists within the jurisdiction's legal framework, though the legal basis for such actions derives primarily from Hong Kong's general civil law principles rather than specific maritime legislation. The High Court has jurisdiction to order arrest, seizure, or detention of property, likely including MORUs, in appropriate circumstances where valid claims exist.

The courts may treat MORUs as movable property or structures rather than conventional vessels or real property. This classification means that general civil remedies, including injunctive relief and orders for detention, may be available to claimants pursuing claims.

Non-maritime claims might include contractual disputes, tort claims, or regulatory violations unrelated to traditional maritime matters. Claims arising out of contact with vessels will be treated as collisions in the ordinary way. The courts maintain discretion to order appropriate remedies, considering factors such as the nature of the claim, the risk of asset dissipation, and the practical implications of detaining such specialised equipment.

**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 release of a MORU from seizure, arrest or detention upon posting of adequate security is generally possible under Hong Kong law. This principle aligns with Hong Kong's commercial approach to dispute resolution and the courts' recognition of the need to balance claimants' interests with the practical implications of detaining valuable commercial assets.

The authority for such release primarily stems from the High Court's inherent jurisdiction to manage proceedings and grant appropriate remedies. The court maintains discretion to determine what constitutes "adequate security" based on the circumstances of each case.

Practical considerations influencing the court's approach to security and release include the nature and value of the MORU, the strength of the underlying claim, the practical implications of continued detention, and the proposed form of security.

**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?")?**

Hong Kong has implemented LLMC 1996 through the Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Cap. 434). The likely outcome is that MORUs would not benefit from LLMC limitation, the primary reasons being MORUs would not meet the definition of "ship" under local law and hence falls outside the intended scope of the convention.

**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?**

For MORUs supporting resource exploitation, a double exclusion likely applies:

- the MORU does not qualify as a "ship"; and
- the activity is connected to resource exploitation (Art 15(5)).

There is no difference in treatment based on indirect resource connection.

**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.**

Given the novelty of MORUs, specific limitation regimes have not been developed, leaving reliance primarily on general commercial law principles and contractual arrangements:

1. Contractual Limitations:
- Contractually agreed caps on liability
- Risk allocation provisions
- Mutual indemnity arrangements
- Force majeure clauses

2. Statutory Limitations:
- General corporate liability principles
- Company law protections
- Statutory immunities where applicable

3. Common Law Principles:
- Contributory negligence
- Mitigation of damages
- Remoteness of damage
- Causation requirements

**<u>Questions related to innocent passage and transit</u>**

**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))?**

Hong Kong does not have such internal waterways.

**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))?**

Any such MORU would likely be considered part of the tug/tow combination for

innocent passage purposes, following standard maritime practice for towed objects.

Hong Kong, operating under UNCLOS through China's extension, should recognise innocent passage rights for such a combination, provided:
- The passage is continuous and expeditious;
- The tow configuration doesn't present unusual navigational hazards; and
- The passage doesn't prejudice peace, good order, or security.

**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?**

Hong Kong would assert criminal jurisdiction over foreign-registered MORUs in its territorial sea over and above what is strictly provided for under UNCLOS Article 27. This expanded jurisdiction would be particularly relevant in cases involving public order, safety concerns, or environmental risks. The jurisdiction would be exercised through local law enforcement agencies, primarily the Marine Department, Hong Kong Police Force and the Environmental Protection Department, with specific attention to maritime safety regulations and environmental protection measures.

**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?**

In terms of civil jurisdiction, Hong Kong would likely maintain a more extensive reach than that outlined in UNCLOS Article 28. This broader jurisdiction would encompass matters related to safety requirements, environmental protection, and navigation regulations. The courts would likely treat MORUs as structures rather than traditional vessels, potentially leading to the application of different civil law principles and regulatory requirements.

**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)?**

Hong Kong does not have any waterways that qualify as international straits under UNCLOS Articles 38 and 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))?**

Hong Kong is not an archipelagic state within the meaning of UNCLOS Article 46.

**<u>Question related to sovereign immunity and rights of owners or creditors to remove property from established MORU operations</u>**

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)?**

Hong Kong is legally bound to follow the rules and policies of the People's Republic of China[1]. Until 2024 this was the doctrine of absolute immunity. However, on 1 January 2024, the Foreign State Immunity Law ('**FSIL**') came into effect in PRC. Under this law, foreign states and their organs generally enjoy immunity from court proceedings and execution against their property, with some key exceptions:

1. Commercial Exception: Immunity may not apply if:
- The activity is commercial in nature;
- The property is used in commercial activities;
- The property is connected to the proceedings; and / or
- The activities either take place within PRC / Hong Kong territory or have 'direct effect' there.

2. Express Waiver Exception: Immunity would not apply if:
- The state expressly waives immunity in writing (through contract or treaty); and
- The waiver specifically submits to PRC/Hong Kong court jurisdiction.

Therefore, whether property under lease/contract with a foreign state organ could be seized would depend on whether the activity is commercial or sovereign in nature, whether there's an express waiver of immunity and / or whether the

[1] *Democratic Republic of the Congo v FG Hemisphere Associates LLC* (No 1) (2011) 14 HKCFAR 95.

property is connected to commercial activities

Important distinctions:
- PRC state organs enjoy 'crown immunity' in Hong Kong which cannot be waived by contract.
- Commercial state-owned enterprises ('**SOEs**') generally don't qualify for immunity.
- Foreign SOEs conducting purely commercial activities without sovereign functions likely will not have immunity.

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?**

Hong Kong law recognises the possibility of sovereign immunity waiver in commercial contexts. The sovereign or state may waive immunity by contract for the benefit of creditors or lienors, provided such waiver is express, unambiguous, and properly authorised.

In the context of energy supply agreements or MORU operations, waivers of sovereign immunity must be explicitly documented in the relevant contracts. The waiver should specifically address the scope of permitted recovery actions and enforcement mechanisms. Courts will generally uphold such waivers in commercial transactions, provided they do not impinge upon core sovereign functions or contradict public policy considerations.

It is important to note that even with a valid waiver, practical enforcement may still face challenges, particularly where strategic assets or essential public services are involved. The courts will typically balance the creditors' rights against public interest considerations when determining the extent to which enforcement actions may proceed.

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