

**First questionnaire from  
CMI Mobile Offshore Renewables Unit International Working Group  
Fall 2024**

Last year, the CMI established a new International Working Group (the “MORU IWG”) (combining it with the Ship Nomenclature IWG) to explore legal uncertainties and potential gaps in international maritime law impacting a new and expanding class of offshore mobile units being developed, built, and used for offshore renewable energy projects in the waters of coastal states around the world—mobile offshore renewables units (or “MORU”). The MORU IWG now seeks to understand how the laws of various countries regulate (or would regulate) MORUs in various contexts, in order to determine common ground and best practices for recommendations to be offered to the CMI. In that context, the MORU IWG requests the input of each National Maritime Law Association (“NMLA”) about the legal treatment of MORUs in several critical areas. Given the relative novelty of the technology in some jurisdictions, the MORU IWG has chosen to supplement this questionnaire with an attached Annex, which provides each NMLA with further background about MORUs generally, and additional context for the questions in the questionnaire more specifically.

**Definition of Mobile Offshore Renewables Unit (“MORU”)**

For purposes of answering this questionnaire about MORUs, the MORU IWG has defined the term as follows:

“Mobile Offshore Renewables Unit” or “MORU” means any non-self-propelled, floating offshore unit or facility consisting of:

- (i) a ship-shaped hull, SPAR, semi-submersible, tension-leg platform, barge, or other buoyant hull concept; AND
- (ii) all internal and topsides equipment permanently attached to that hull,

provided that such floating offshore unit or facility:

- (a) is primarily designed for the purpose of directly or indirectly generating electric power or other form(s) of renewable energy by conversion of wind, wave, tidal, or solar energy, or differences in water temperatures or salinity, or a combination of any of the foregoing; OR
- (b) is primarily dedicated to the conversion, transformation, conditioning, transmission, distribution, and/or temporary storage and subsequent release of electrical power or other form of renewable energy originally generated by one or more MORUs described in paragraph (a) above; OR
- (c) is primarily dedicated to the conversion of any electrical power or other form of renewable energy generated by one or more MORUs described in paragraph (a) above into chemical products; OR
- (d) is a hybrid unit combining the functions of two or more of the classes of units described in any of the paragraphs (a), (b), and/or (c) above.

## I. Questions related to ownership and other property interests in MORUs

### 1. Treatment of Domestic MORUs as property

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.

In our view, the courts in Japan are unlikely to recognise any category of MORUs as a “ship” or “vessel” in the civil or commercial law sense.

#### Explanation:

##### 1.1 A “Ship” or “Vessel” in Civil or Commercial Laws

Japanese law belongs to civil law families. In civil litigation, the courts are primarily bound by codified rules while they respect judicial precedents and academic literature in interpreting or construing provisions in statutes.

Under Japanese law, a ship is not categorized as an “immovable” but as a “movable” since a ship is neither “land” nor “any fixtures thereto” (Article 86(1) and (2) of Civil Code). Rules applicable to movables are, from various perspectives, different from those applicable to immovables: e.g., rules as to mortgages or hypothèques [*teitou-ken*] are not applicable to movables (Article 369 (1) and 370 of Civil Code); a requirement for perfection of transfer of property rights in a movable is “delivery” (i.e., transfer of possession) while that for an immovable is “registration” (Article 177 and 178 of Civil Code).

However, ships are different from ordinary movables in that some rules applicable to immovables *mutatis mutandis* apply to a ship with gross tonnage of 20 or more: e.g., a ship with 20 or more tonnage must be registered in the Ship Title Registry (Article 686 of Commercial Code. See the answer to Question 2 for details); a registered ship can be mortgaged (Article 847 (1) of Commercial Code) and rules applicable to mortgages on immovables *mutatis mutandis* apply to mortgages on a ship (Article 847 (3) of Commercial Code); registration is required to perfect transfer of property rights in a ship with gross tonnage of 20 or more (Articles 686 and 687 of Commercial Code) or a lease of a ship with gross tonnage of 20 or more (Article 701 of Commercial Code). In addition, a ship at sea on its voyage is not allowed to be seized or provisionally seized (Article 689 of Commercial Code).

Therefore, whereas no court cases on MORUs or similar objects have been reported so far, whether a MORU amounts to a “ship” or not will be decisive and of great importance in the application of property law rules.

#### 【Provisions of the relevant legislation】

- **Civil Code** (Act No.89 of 1896)  
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*Article 86 (Immovables and Movables)*

- (1) Land and any fixtures thereto are immovables.
- (2) Things other than immovables are movables.

*Article 177 (Requirements of Perfection of Changes in Real Rights on Immovables)*

*Acquisitions of, losses of and changes in real rights on immovables may not be duly asserted against any third parties, unless the same are registered pursuant to the applicable provisions of the Real Property Registration Act (Act No. 123 of 2004) and other laws regarding registration.*

*Article 178 (Requirements of Perfection of Transfer of Real Rights Concerning Movables)*

*The transfer of a real right on movables may not be duly asserted against a third party, unless the movables are delivered.*

*Article 369 (Content of Mortgages)*

*(1) A mortgagee has the right to have the mortgagee's claim satisfied prior to other obligees out of the immovables that the obligor or a third party provided to secure the obligation without transferring possession.*

*Article 370 (Scope of Effect of Mortgages)*

*A mortgage extends to the things that form an integral part of the immovables that are the subject matter of the mortgage (hereinafter referred to as "mortgaged immovables") except for buildings on the mortgaged land; ...*

- **Commercial Code** (Act No. 48 of 1899)

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*Article 686 (Registration of Ship)*

- (1) A shipowner must register their ship and obtain a certificate of the vessel's nationality pursuant to the provisions of the Ship Act (Act No. 46 of 1899).
- (2) The provisions of the preceding paragraph do not apply to a ship with a gross tonnage of less than 20 tons.

*Article 687 (Requirements for Perfection of Transfer of Ownership of Ship)*

*The transfer of ownership of a ship may not be asserted against a third party unless it is registered and entered in the certificate of the vessel's nationality.*

*Article 689 (restriction on Seizure of Ships at Sea)*

*It is not permissible to carry out a seizure or provisional seizure (other than a provisional seizure by means of registration) of a ship that is at sea (excluding a ship that is at anchor).*

*Article 701 (Validity of Ship Leasing Against Third Parties)*

*After the leasing of a ship is registered, it is also valid against a person that later acquires a real right over the ship*

*Article 847 (Mortgage on Ship)*

*(1) A registered ship may be made the subject matter of a mortgage.*

*(2) A mortgage on a ship extends to its equipment.*

*(3) Provisions concerning mortgages on real property apply mutatis mutandis to a mortgage on a ship....*

- **Ordinance on Ship Registration** (Ordinance No. 11 of 2005)

*Article 2 (1) "Ship" means a ship that has 20 gross tonnage or more and is used in for a voyage at sea except tender boat or other boat steered solely or mainly with oars or paddles.*

## 1.2 Definitions of "ship" under the relevant legislation

Under Japanese law, there is no overarching definition of "ship" that is applicable in all statutes. In respects of private law, classification of ships in each act is more important than the definition. Each act defines a "ship" based on its legislative purpose. The definitions under some Japanese acts relating to civil or commercial matters are as follows:

- **Commercial Code** (Act No. 48 of 1899)

*The term "Ship" ... means a ship that is used for a voyage at sea for the purpose of conducting a commercial transaction (excluding a ship's tender or a boat steered solely or mainly using oars or paddles). (Article 684) (Article 2(1) of International Carriage of Goods by Sea Act (Act No. 172 of 1957) adopts the same definition referring to this Article.)*

- **Act on Limitation of Liability of Shipowner** (Act No. 94 of 1975)

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*"Ship" means a ship that is used for a voyage at sea except tender boat or other boat steered solely or mainly with oars or paddles and a ship used for public purposes. (Article 2, Paragraph 1(i))*

- **Act on Oil Pollution Liability** (Act No. 95 of 1975)

<https://www.japaneselawtranslation.go.jp/ja/laws/view/4467>

*"General Ship" means a ship/boat etc. for the carriage by sea of passengers or cargoes and other goods other than "crude oil, etc." in bulk (excluding a boat steered solely or mainly using oars or paddles). (Item (ix) and (x) of Article 2)*

- **Civil Execution Act** (Act No. 4 of 1979)

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*Compulsory execution against a vessel of not less than twenty tons gross (excluding a tender boat or any other boat that uses solely or mainly oars or paddles for propulsion; hereinafter referred to as a "vessel" in this Section and*

*the following Chapter) (hereinafter referred to as "execution against a vessel") shall be carried out by the method of a compulsory auction. (Article 112)*

These Acts specify their scope of application by defining a “ship” under each Act without explaining a “ship” or “vessel” itself.

In respect of public laws, the Ministry of Land, Infrastructure, Transport and Tourism (hereinafter, the MLIT) takes a position that a floating offshore generator is not a “ship” under the Ship Act, but it is a “special ship” under the Ship Safety Act.

- **Ship Act (Act No. 46 of 1899)**

The Ship Act is a basic act concerning requirements for Japanese nationality of ships, but no definition of “ship” is provided in the Ship Act itself. The Detailed Regulation for Enforcement of the Ship Act provides that a dredger without propelling machinery shall not be regarded as a ship under the Ship Act (Article 2 of the Regulation). The reference to a dredger is exemplary and the same applies to a service ship of other types.

An explanatory paper prepared by the MLIT as to the legal characteristic of floating offshore wind generators says that a property with “buoyancy”, “loading capacity”, and “mobility” is regarded as a “ship” under the Ship Act and that, since floating offshore wind generators currently anticipated are to be fixed at the seabed by mooring ropes, they lack “mobility” and will not be regarded as a “ship” under the Ship Act.

- **Ship Safety Act (Act No. 11 of 1933)**

According to the same explanatory paper prepared by MLIT, a floating offshore wind generator is regarded as a “special ship” under the Ship Safety Act (Item 4 of Notification of the MLIT on Article 1(4) of the Ordinance on the Ship Safety Act (Notification No.56 of 1980, Amendment No.183 of 2019)). Under the Ship Safety Act, a “ship” is interpreted as a structure that can float on waters and is designed to fulfill some social or economic purpose by moving on water or by carrying other objects or people. A floating offshore wind generator comes under the definition and inspections of such a structure as a special ship is required to secure its safety. Under the Electricity Business Act (Act No. 170 of 1954. English translation is available at <https://www.japaneselawtranslation.go.jp/en/laws/vie>) as interpreted in accordance with Article 16 (2) of the Circular Notice on Interpretation of the Ministerial Ordinance of Technical Standards for Wind Power Generation Equipment, a structure that supports a wind turbine must be conform to the provisions of the Ship Safety Act.

### 1.3 Definitions of ship under judicial precedents

Turning to judicial precedents, some lower courts interpret a “ship” as follows:

- **Matsuyama District Court on 25 August 1961, Hanrei Times, No. 123, p.64**  
The Court held, for the purpose of approving that towage of a dredger barge without propulsion on its own was towage of another “ship”, that a ship in the law of maritime commerce meant no more than a ship in social common sense that was used for a voyage at sea for the purpose of conducting a commercial transaction.
- **Tokyo High Court on 23 August 1972, Hanrei Jiho, No. 681, p.79**  
It was indicated in the context of demands for salvage rewards set forth in Article 800 [*in the old version, corresponding to Article 798 in the current version*] of the Commercial Code that a “ship” set forth in the said Article was synonymous with a “ship” set forth in Article 684, and it broadly meant a “structure used for a voyage at sea for the purpose of conducting a commercial transaction” (except ships with oars), and whether a certain structure was a ship or not “should be determined by social common sense, having regard to its overall purpose of use, shape, and characteristics of the structure” and it could not be said that a structure was not a ship by reason of the lack of its own propulsion power. It further held that a container barge converted from a tanker without its own propulsion power was still a “ship”, because it still retained a shape of ship even after the removal of its engine and other parts and was capable of floating in the water with a load and being navigated by way of towage, though it did not have its own propulsion power.
- **Osaka High Court on 10 March 2010, Kaijiho Kenkyu Kaishi, No. 217, p.62:**  
It held, in relation to the application of Act on Limitation of Liability of Shipowner to a crane ship without her own propulsion power, that while the main purpose of the ship in question was to render services at a specific location, considering that she was able to be navigated by being towed, was equipped with facilities for persons to stay on board, and was actually carrying men who worked on board, it was a ship under the Act for the reasons that it “not only had a structure suitable for transporting persons, but was also a structure that moved in water with the purpose of transporting persons to their destination ... by being towed ... and thus it could be said to be used for a voyage”.
- **Tokyo District Court on 6 September 2013, Syomu Geppo, Vol. 61, No. 1, p. 207; Tokyo Hight Court on 24 April 2014, Syomu Geppo, Vol. 61, No. 1, p. 195**  
The District Court held, in deciding whether a lease of rigs (which could float with a load) used for offshore drilling was a lease of ships under the Income Tax Act, that various circumstances related to the lease of such objects should be examined in light of social common sense. On appeal, Tokyo Hight Court added that the relevant provision of the Income Tax Act merely listed a “ship” as an example of depreciable assets, and the “ship” could not be interpreted as having the same meaning as a “ship” in the Ship Act, that is , a ship used for a voyage or international transport.

- **Fukuoka High Court on 4 February 2021, Hanrei Jiho No. 2498, p.116**

It held that there was little necessity to align the definition of a seagoing ship under the law of maritime commerce with that under the Ship Safety Act relying on the definition of “smooth waters” under the Ship Safety Act, and therefore it was reasonable to construe the law of maritime commerce and the Act of Limitation of Liability of Shipowners should apply to a ship navigating the areas that were regarded as the sea in social common sense, as being a seagoing ship thereunder.

It is evident from these judgments that in determining whether an object amounts to a ship or not in the civil or commercial law sense, the courts ask if the object can be seen as a ship in social common sense and put weight on such factors as being used for a voyage or transportation in water.

#### 1.4 Definitions of ship in academic literature

Among academics, the definition of “ship” in civil or commercial law is discussed variously in different lengths and nuances. A “ship” is generally defined as a certain “structure” “used for a voyage” or “having the purpose and capacity of navigation” “in water”. It is eventually often considered to be “a ship in social common sense” (or it is determined by social common sense).

#### 1.5 Summary

Understanding of “ship” depends on the legislative purpose of each Act, and almost all of the definitions for civil or commercial matters quoted above require the element of being used for a voyage, which MORUs do not have since MORUs are defined as floating offshore unit or facility that is designed for the purpose of the directly or indirectly generating electric power or other form(s) of renewable energy and/or dedicated to the conversion, transformation, conditioning, transmission, distribution, and/or temporary storage and subsequent release of electrical power or other form of renewable energy originally generated by one or more MORUs. Considering the characteristics of the structure, MORUs neither have a structure suitable for a voyage, nor a structure that is towed in water for the purpose of transporting persons or goods to their destination, although MORUs are capable of floating in the water with goods and persons and being navigated by way of towage. Therefore, in our view, the courts in Japan are unlikely to recognise any category of MORUs as a “ship” or “vessel” in the civil or commercial law sense.

- 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)?

In our view, the courts in Japan are unlikely to recognise any category of MORUs as a “ship” or “vessel” even if it were equipped with the DPS or other station-keeping system.

Please see our answers above for details. Even if MORUs are equipped with DPS or other station-keeping system, the purpose and the characteristics of MORUs are unchanged: MORUs are not used for transportation of a load or persons to their destination and the purpose is not for a voyage in water. Therefore, equipping the DPS will not affect our conclusion.

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

It is unlikely that ownership interests in any categories of MORUs are allowed to be registered in the Ship Title Registry [*senpaku-toki*]. Proprietary interests in a MORU may be registerable in the registration system for ordinary movables (see 2-2 below) although no attempts to register such interests have been known so far.

**Explanation:**

2.1 We understand that some countries have a unified ship registration system in which registration is not only a prerequisite for navigation and application of administrative regulations under public law but also a condition to secure proprietary rights in a ship under private law. Japanese laws, however, has following two different ship registration systems (except for a small ship with less than 20 gross tonnages, which can be registered in a unified registry under the Act on Registration of Small Ships (Act No.102 of 2001) and subject to property law rules applicable to ordinary movables except for the requirements for perfection of title transfer).

- (1) Registration system for property rights in a ship to record and publicly disclose the ownership of and/or other property rights in a ship for private law purpose [*senpaku toki*] (hereinafter, “Ship Title Registry”). Ownerships, mortgages and leases are registerable under this registration system (Articles 686, 697, 701 and 847, Commercial Code, Article 3 (1) the Ordinance on Ship Registration.). The Ship Title Registry is maintained by a competent Registry Office among the Legal Affairs Bureaus, District Legal Affairs Bureaus or its branches, which are internal organs of the Ministry of Justice.
- (2) Registration system for public law purposes [*senpaku toroku*] (hereinafter, “Ship Register”). The nationality certificate of a Japanese ship is issued on the basis of this registration system (Article 5 (2), Ship Act), and a Japanese ship is allowed to fly the Japanese flag and to navigate only after the ship obtains the nationality certificate (Article 6, Ship Act). The Ship Register is kept by a competent maritime authority among the Transport Bureaus, regional branch offices of the MLIT.



According to the Ship Act, the owner of a Japanese ship “*shall determine the port of registry in Japan and apply to the competent maritime authority having jurisdiction over the port of registry for the measurement of the gross tonnage of the ship*” (Article 4 (1), Ship Act) and “*shall register the ship in the Ship Title Registry (i.e., register the ownership of the ship) and then shall register it in the Ship Register maintained by the maritime authority which has jurisdiction over the port of registry*” (Article 5 (1), Ship Act).

We understand that this Question asks about the applicability of the former to MORUs: ***whether a MORU is registrable as a “ship” in the Ship Title Registry for private law purpose.*** If a MORU is regarded as a ship under the Commercial Code, the Ship Act and the Ordinance on Ship Registration, the ownership interests can be recorded in the Ship Title Registry [*senpaku toki*] with the effect that the property right become opposable to third parties (Article 687 of the Commercial Code).

As explained in the answer to Question I.1, however, it is unlikely that a MORU is regarded as a “ship”, and ownership interests in any categories of MORUs are allowed to be registered in the Ship Title Registry [*senpaku toki*].

2.2 Proprietary interests in MORUs may be registrable in another registration system for ordinary movables owned by a corporation under the Act on Special Provisions for the Civil Code Concerning the Perfection Requirements for the Assignment of Movables and Claims (Act No.104 of 1998. English translation available at <https://www.japaneselawtranslation.go.jp/ja/laws/view/3464>), which can be used to perfect the title transfer of movables. The perfection through this registration is an exception to the general rule in property law that transfer of possession of a movable is required to perfect the title transfer, i.e., the change of ownership (Civil Code, Article 178). Currently, our laws on secured transactions are under thorough review with the aim to modernise and make the laws more business-friendly, considering recent international or comparative developments in this area. If the reform proposal is successfully finalised and comes into effect, proprietary interests such as title transfer of a movable for security [*joto-tanpo*], or retention of title in a movable will become registrable as security interests under this registration system while it is yet to be seen whether a proposal for allowing the registration of finance lease contracts will be adopted as the domestic leasing industry expresses strong concern over this proposal. Ownership or security interests in the movables that can be mortgaged, such as ships (with 20 or more gross tonnage) or aircrafts, will be outside the scope of the to-be-revised registration system.

- 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.

It is unlikely that ownership interests in MORUs are allowed to be recorded in The Ship Title Registry since a MORU will not be considered as a “ship”.

As mentioned above, if a MORU were regarded as a “ship” under the Commercial Code, the Ship Act and the Ordinance on Ship Registration, the ownership interests could be recorded in the Ship Title Registry [*senpaku toki*]. However, as shown above, a MORU will not be considered as a “ship” (see the answer to Question I.1).

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

The registration system for ordinary movables may be available (see the explanation 2.2 above) if a MORU is not considered as a "ship" although no attempts to register such interests in this registration have been known so far.

- 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 mentioned in the explanation 2.1 above, if a MORU were registered in the Ship Register, the nationality certificate of a Japanese ship would be issued on the basis of the registration (Article 5 (2), Ship Act) and this makes it possible for the ship to fly the Japanese flag and commence navigation (Article 6, Ship Act).

However, as shown above, it is unlikely that a MORU is registered as a “ship” in the Ship Title Registry and The Ship Register.

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. If a MORU were regarded as a “ship”, which is we think unlikely (see the answers to Question 1 for details), a right of lease, a sublease of a leased subject and the transfer of a right of lease could be registered in the Ship Title Registry. If a demise charter of a ship is considered as a "lease" under Japanese law, the charterer's right of lease (not a contract or agreement itself) can be registered in the Ship Title Registry, and therefore, if a MORU were regarded as a “ship”, a lease of the MORU could be registered, but no charters other than this are registrable.

Leases of ordinary movables are not registrable under the current registration system for ordinary movables (see the explanation 2.2 above).

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?

No. As mentioned in the explanation 1.2 above, under Japanese law, there is no overarching definition of “ship”, and a “ship” in each statute is interpreted in accordance with its legislative purpose. Therefore, the acceptance by a registrar of the Ship Title Registry of a movable as a “ship” is not dispositive of its legal status as a “ship” under Japanese law. Such acceptance does not affect the understanding of a “ship” in the relevant Acts shown in the explanation 1.2 and 1.3 above.

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

If a MORU were regarded as a “ship”, which is unlikely (see the answer to Question 1 for details), mortgages or hypothèques and rights of lease could be registered in the Ship Title Registry. Even if a MORU were regarded as a “ship”, liens, maritime liens or claims would not be registrable in the Ship Title Registry, and the registered MORU could not be pledged (Article 849, Commercial Code).

It may be possible to record the title transfer of a MORU in the registration system for ordinary movables (see the explanation 2.2 above for details).

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

If a MORU were regarded as a “ship”, which is unlikely (see the answer to Question 1 for details), mortgagees are given priority over unsecured creditors, but not over the holders of maritime liens (Article 848, Commercial Code). If more than one mortgage is created in a ship, any mortgage registered earlier prevails over the others (Article 847 (3), Commercial Code and Article 373 of the Civil Code). A registered lease is binding on those who obtain a property right in the ship later (Article 701, Commercial Code), and it is also opposable to the mortgagees who registered their mortgages earlier than the lessee if all the mortgagees gave their consent and those consents have been registered (Article 847 (3), Commercial Code and Article 387, Civil Code).

Currently, the perfection of the title transfer of ordinary movables through the registration is concurrent with the perfection by transfer of possession, i.e., whichever comes earlier prevails. Under the to-be-revised laws on secured transactions, the registered interests will be better protected (see the explanation 2.2 above for details).

### **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?

Probably yes, although the reasoning for the recognition is not entirely certain.

The Act on General Rules of Applicable Laws (Act No.78 of 2006, hereinafter the AGRAL), conflict-of-laws rules of Japan, adopts the *lex rei sitae* principle both as to movables and immovables (Article 13, AGRAL). While no special conflict-of-laws rules for ships or other transport means exist in the AGRAL, it is generally agreed that the ownership or registered interests in a ship should be governed by the law of the flag. Regarding automobiles, the Supreme Court of Japan held that the law of the place where an automobile was mainly used should apply as *lex rei sitae* if the automobile in question was ready for or in operation (e.g., duly registered for use) whereas the law of the place where an automobile was physically located should apply if the automobile was out of operation (Supreme Court Judgment on 29 October 2002, Minshu Vol.56, No.8, p.1964; English translation is available at *Japanese Annual of International Law, No.46, 2003*, pp.175-180 (published in 2004)).

Therefore, there are three possibilities: (1) the *lex registri* applies if a MORU is considered as a ship for the purpose of conflict-of-laws rules; (2) the law of the place where a MORU is physically located applies as a result of literal application of the conflict-of-laws rules; (3) the law of the place where a MORU is mainly used applies in analogy with the Supreme Court case above. Some argue that (1) is covered by (3). In our view, the third approach is most convincing for foreign-registered MORUs and if the first or the third approach is taken, the registered interests will be recognised.

Article 13 of the AGRAL provides as follows:

Article 13(1) A real right to movables or real properties and any other right requiring registration are governed by the law of the place where the subject property of the right is situated.

(2) Notwithstanding the provisions of the preceding paragraph, acquisition or loss of a right prescribed in that paragraph is governed by the law of the place where the subject property of the right is situated at the time when the facts constituting the cause of the acquisition or loss were completed

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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?

Whether the procedures listed in (ii) are available depends on Japanese civil procedure law as the law of the forum (*lex fori*). If the MORU is considered as a “ship with 20 or more gross tonnage” for the purpose of the procedural laws, the special rules for ships apply (see Article 48, Civil Provisional Remedies Act (Act No.91 of 1989)

[https://www.japaneselawtranslation.go.jp/ja/laws/view/3928#je\\_ch3sc2](https://www.japaneselawtranslation.go.jp/ja/laws/view/3928#je_ch3sc2) and Articles 112–121 and 189, Civil Execution Act (Act No.4 of 1979). The special rules for ships are mostly the same as those applicable to immovables). If not, the MORU is subject to procedural rules for ordinary movables (Article 49, the Civil Provisional Remedies Act, and Articles 122-142, 190-192).

Whether a property right, such as a mortgage or a lien of proprietary nature, exists in the MORU and has legal effect in the procedures above is determined by the *lex rei sitae* as explained in the answer to Question I. 7 **Error! Reference source not found.** although there remains uncertainty about governing law of maritime liens. The existence and effect of personal claims depends on *lex causae*.

As far as a claim is considered as existing and effective under the governing law, the procedures for ordinary movables are available even if the MORU is not considered as a “ship”, and therefore, the claim is enforceable.

#### Supplementary Note:

For your information, Japan is neither a party to the International Convention relating to the Arrest of Seagoing Ships in 1952 nor the International Convention on Arrest of Ships, 1999. “Arrest of ships” under Japanese law is different from an action *in rem* in common law countries. Provisional seizure against a vessel effected through confiscation of the documents necessary for the navigation of the vessel under the Civil Provisional Remedies Act, or seizure of a vessel by the same way under the Civil Execution Act roughly corresponds to “arrest of ships” in common law jurisdictions.

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?

It is uncertain whether a Japanese court would accord the same priority.

As mentioned in the answers to Question I.7, effects of property rights are governed by the *lex rei sitae*. When a procedure to enforce a claim against a ship or movable starts before a Japanese court and the priority among property rights in it is at issue, the prevailing view is that the law where the ship or movable is

physically located, which is coincide with *lex fori*, determines the priority. If a court follows this approach, the priority is determined by Japanese law and the priority accorded in the jurisdiction where the MORU is registered will not be considered. Some academics prefer the application of the law of the flag in cases of a foreign-registered ship, and if a court thinks the same idea should be applied to a foreign-registered MORU, the priority in the jurisdiction where the MORU is registered will be applied. There are no express provisions which give a judge discretion over the priority.

- 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?

Japan is not a party to these 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?

It is uncertain what law a Japanese court would apply.

As stated in the answer to Question I.7, the *lex rei sitae* principle governs the acquisition of property rights but this principle is, at least in Japanese conflict-of-laws, open to various interpretations. The fact that the MORU is registered in a foreign country and operated in Japanese EEZ is a further complication to the interpretations.

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?

No, in the hypothesis a. Yes, in the hypothesis b.

In the hypothesis b, the fact that the MORU is situated in the territorial sea at the time of sale or change of ownership would increase the likelihood of application of Japanese law though the possibility of application of *lex registry* would remain.

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.

To our knowledge, there are no reported decisions in Japan which address the issue.

## II. 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?

As stated in the answer to Question I.8 above, Japanese law does not know "procedure *in rem*" or such "maritime claims" as defined by the Arrest Conventions. Provisional seizure or seizure for execution against a MORU is possible under the general procedural laws (the answer to a.). The procedural issues are determined by Japanese law as *lex fori*. Whether property rights exist and have effects are governed by the *lex rei sitae* principle, and personal claims are governed by *lex causae* (the answer to b.). See the answers to Question I.8 for details.

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

Yes. Japanese law does not distinguish "maritime claims" from other claims (non-maritime claims). Therefore, the answer to this question is the same as Question II.1 above.

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.

Largely yes. The ground and the detailed requirement for a release depends on which procedure is taken against the MORU.

With respect to provisional seizure under the Civil Provisional Remedies Act, Article 51, Paragraph 1 provides that *“if an obligor proves that they have made a statutory deposit of money equivalent to the amount of money specified under the provisions of Article 22, paragraph (1), the court executing the provisional remedy must revoke the execution of the provisional seizure”*. This provision applies to provisional seizure of a ship, movable or immovable.

If a MORU is considered as a “ship”, with respect to execution under the Civil Execution Act, Article 117, Paragraph 1 provides that *“in cases where the document set forth in Article 39 (1)(vii) or (viii) has been submitted with regard to the claim of an obligee effecting a seizure, if the obligor provides, prior to any purchase offer, a guarantee equivalent to the total amount of the claims and execution costs of the obligee effecting a seizure and obligees who made a demand for liquidating distribution by the time of provision of the guarantee (or, if it is after the time limit for a demand for liquidating distribution, by such time limit), the execution court shall, upon petition, rescind the compulsory auction procedure, except for the procedure of liquidating distribution, etc.”*. This provision *mutatis mutandis* applies to the procedure to enforce a security interest against a ship, such as ship mortgages or maritime liens (Article 189, the Civil Execution Act). However, no corresponding regime exists as to the seizure of ordinary movables.

### III. 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?”) ?

It is unlikely for the owner or salvor of a MORU to benefit from the limitations of liability under The Act on Limitation of Shipowner Liability (Act No.94 of 1975, hereinafter the “ALSL”).

#### Explanation:

1.1 Japan is a party to the Convention on Limitation of Liability for Maritime Claims, and Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims, 1976, and Amendments to 1996 Protocol (LLMC). The ALSL is the domestic legislation corresponding to the LLMC.

1.2 Article 1 (1) (ii) of the LLMC defines the owner of a ship who is an entity entitled to limit liability as the owner and others of a “seagoing ship” and there is no definition of a ship, while Article 2 (1) (i) of the ALSL provides that “ship” means a ship that is used for a voyage at sea except tender boat or other boat steered solely or mainly with oars or paddles and a ship used for public purposes.



1.3 According to Yasushi Tokioka et al, *Commentaries on the Act on Limitation of Shipowner Liability and the Act on Liability for Oil Pollution Damage* (Shojihomu Kenkyukai 1979) p. 26, commentaries by draftsmen of the ALSL at the time of initial enactment when Japan ratified the 1957 Convention, the “sea” in the definition of the “ship” in Article 1 (1) (ii) above does not include smooth waters and a ship that navigates only in smooth waters is not a “ship used for a voyage at sea” in the ALSL, and its shipowner etc. are not entitled to limit their liability. Takeo Inaba and Itsuro Terada, *Commentaries on the Act on Limitation of Shipowner Liability* (Hosokai 1989) pp. 61-62, commentaries by draftsmen at the time of the revision of the ALSL when Japan acceded to LLMC, do not express their own view but simply explain the understanding above as a prevailing view and show the opposing view which consider the “sea” as the sea in the sense of social common sense.

1.4 Judgment of Fukuoka High Court on 4 February 2021, Hanrei Jiho, No. 2498, p. 116 held that the “sea” under the ALSL means the sea in social common sense and hence a shipowner of the ship navigating in waters considered as the sea in social common sense is entitled to limit its liability under the ALSL. This is a deviation from the prevailing view above.

1.5 According to Inaba and Terada, p.62, the definition of a “ship” under the ALSL is open to interpretation and the concept is defined as a structure having the purpose and capacity of navigation in water which is interpreted by social common sense. It is said that a “ship” is required to be fit for carriage of persons or goods, while the ability of self-propulsion is not necessarily required (Judgement of Tokyo High Court on 23 August 1972, Hanrei Jiho No.681, p. 79) and that it includes lighter, barge and lash vessel. Air-cushion vehicles or floating platforms constructed for the purpose of exploring or exploiting the natural resources of the sea-bed or the subsoil thereof are excluded under Article 15.5.(a)(b) of the LLMC, but under the ALSL, these vessels are not categorically excluded and if such a vessel falls within the concept of the “ship”, the ALSL would apply to them.

1.6 Based on the definition of a “ship” and its authoritative interpretation shown by Inaba and Terada, the purpose and capacity of navigation in water is required to regard a structure as a “ship” under the ALSL. On the other hand, the purpose of a MORU is not navigation in water but directly or indirectly generating electric power or other form(s) of renewable energy and/or dedicated to the conversion, transformation, conditioning, transmission, distribution, and/or temporary storage and subsequent release of electrical power or other form of renewable energy originally generated by one or more MORUs. Therefore, it is unlikely for the owner or salvor of a MORU to benefit from the limitations of liability under the ALSL.

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?

No. See the answer to Question III.1.

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.

#### IV. 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))?

If the towing vessel is a Japanese-flagged-ship, towing a foreign-registered MORU within internal waters presents no legal issue in terms of the right of innocent passage. If the towing vessel is a foreign-flagged-ship, the vessel enjoys the right of innocent passage under international law. In addition, the vessel shall comply with Article 4, Paragraph 2 of the Act on Navigation of Foreign Ships through the Territorial Seas and Internal Waters (Act No. 64 of 2008, "Foreign Ships Navigation Act"). In principle, foreign ship's passage through the Japanese internal waters (other than the newly established internal waters) without calling at any Japanese harbor facilities is prohibited.

#### **Explanation:**

1.1 It is said that Japan adopts a method of general acceptance [*ippanteki-juyo*]. Japan complies with the innocent passage regime under the United Nations Convention on the Law of the Sea (UNCLOS), although it has no domestic law defining the meaning of "innocent passage." However, the Foreign Ships Navigation Act clarifies the meaning of "passage" in Japanese waters in accord with Article 18 of the UNCLOS.

#### **【Provisions of the relevant legislation】**

- **Act on Navigation of Foreign Ships through the Territorial Seas and Internal Waters** (Act No. 64 of 2008)

#### *Article 3*

*Passage of foreign ships in the Japanese territorial seas and internal waters shall be continuous and expeditious for the purpose of passing by the territorial seas or internal waters (limited to the newly established internal waters) or calling at harbor facilities.*

*Article 4, Paragraph 1 and 2*

*When navigating in the Japanese territorial seas and internal waters, Master of foreign ship is not allowed to make the following activities: (i)stopping..., (ii)anchoring..., (iii)mooring..., (iv) hovering or any other activity not having a direct bearing on passage... In addition to this, foreign ship's passage through the Japanese internal waters (other than the newly established internal waters) without calling at any Japanese harbor facilities is prohibited.*

*Article 2, Item 2*

*"Newly established internal waters" means the parts of internal waters which are newly established as internal waters by the straight baselines provided by Article 2, Paragraph 1 of the Act on Territorial Waters and Contiguous Water Areas.*

*Article 2, Item 3*

*"Foreign ship" means a ship other than the Japanese ship provided in Article 1 of Ship Act (Act No.46 of 1899), except for a foreign battleship and a ship owned or operated by foreign government and used only for non-commercial purpose.*

1.2. Based on Article 4, Paragraph 2 of the Foreign Ships Navigation Act, in principle, foreign ship's passage through the Japanese internal waters (other than the newly established internal waters) without calling at any Japanese harbor facilities is prohibited.

As stipulated in Article 21 of UNCLOS on laws and regulations of the coastal State relating to innocent passage, in principle, the coastal State may adopt laws and regulations relating to innocent passage through the territorial sea, in respect of the safety of navigation and the regulation of maritime traffic among others, and foreign ships exercising the right of innocent passage through the territorial sea shall comply with all such laws and regulations and all generally accepted international regulations relating to the prevention of collisions at sea.

Therefore, even if a foreign-registered MORU being towed through Japanese jurisdiction's internal waters is regarded as having a right of innocent passage in our jurisdiction, it is required to comply with all such laws and regulations. For example, Article 22(iv) of the Maritime Traffic Safety Act (Act No. 115 of 1972) provides that the captain of the tugboat or the towboat towing or pushing a ship or a structure such as a raft or others above a certain size shall notify the Japan Coast Guard of the name of the vessel, its gross tonnage and length, estimated passage time of the channel, communication methods among others. Further, Article 24 of the Act on

Preventing Collisions at Sea (Act No. 62 of 1977) provides the special requirements for the tugboat towing a ship or other structure. (In the meantime, it is referred to in page 29 of the Class NK's Guideline for Execution of Towing and Mooring for Offshore Wind Power Facility Construction (for your information, you can obtain the guideline at [the Class NK's web](#) after registration) that the captain of the chief tugboat is responsible for preparation of the towing plan which shall be complied with the requirements stipulated in the COLREGs and the Act on Preventing Collisions at Sea.)

No comprehensive definition of a "ship" can be found in the UNCLOS, nor in most of the Japanese Acts above. (The Act on Preventing Collisions at Sea, Article 3, provides that ships are boats used for waterborne transport (including seaplanes) for the purpose of the instrument.) Also, under Japanese law, there is no overarching definition of "mobile offshore renewable unit" including floating offshore wind power facility that is applicable in all statutes. Each Act or regulation deals with floating offshore wind power facility based on its legislative purpose, as referred to in the explanation 1.2 to the first question of Q1 "Treatment of Domestic MORUs as property" of "Questions related to ownership and other property interests in MORUs".

1.3 On the other hand, it is considered in a working group attended by Japanese governmental officials and non-officials that floating offshore wind facilities are not categorized as "ships" but as "installations and structures", although this is just a discussion regarding the legal characteristic of the floating offshore wind facilities in EEZ (Summary report by the Working Group on Various issues regarding International Laws in relation to development of Offshore Wind Farm in EEZ, 2023, available at <https://www8.cao.go.jp/ocean/policies/energy/pdf/torimatome.pdf>).

According to the Summary report, in Japan, the legal characteristic of floating offshore wind facility is considered as follows:

Under the Japanese law, there is no specific definition of a "ship" in the Ship Act which is said to be a basic and standard law controlling Japanese flagged vessels. Regarding the artificial islands, installations, and structures, there are no specific definitions, neither. However, it is interpreted, based on the Act on Exclusive Economic Zones and Continental Shelf (Act No.74 of 1996), that the meanings of them under the Japanese laws are identical to those under the UNCLOS which mean artificial structures and others at sea. It is said that, under the Japanese law, platforms for mineral resources development and barges for drilling, etc. are categorized as "installations and structures". However, barges for drillings are deemed as "special vessel" under the Ship Safety Act considering the

structural special characteristics and this is the case as to floating offshore wind facilities, too. Both the safety standards under the Electricity Business Act and the Ship Safety Act shall apply to floating offshore wind facilities. On the other hand, as mentioned in the above, a floating offshore wind facility is not regarded as a “ship” under the Ship Act. Considering these things, it is not necessarily required to deem a floating offshore wind facility as a “ship” under the international laws. Thus, since floating offshore wind facilities are fixed at a specified place and they are installed for business reasons, it is advisable that floating offshore wind facilities will be categorized as “installations and structures” of the UNCLOS.

1.4. Since a MORU is not only non-self-propelled facility but also primarily designed for the purpose of generating electric power or something and designed to be fixed at a certain place with mooring ropes, a MORU is unlikely to be deemed as a “ship” in the UNCLOS and the Japanese law above.

Under this premise, a MORU, even if it is registered in a foreign country, being towed, will not enjoy a right of innocent passage which is given to a “ship” under the UNCLOS.

1.5. Therefore, if the towing vessel is a Japanese-flagged-ship, towing a foreign registered MORU within internal waters presents no legal issue in terms of the right of innocent passage, without prejudice to the applicability of other environmental or economic regulations. If the towing vessel is a foreign-flagged-ship, it enjoys the right of innocent passage under international law. In addition, it shall comply with Article 4, Paragraph 2 of the Foreign Ships Navigation Act. In principle, foreign ship's passage through the Japanese internal waters (other than the newly established internal waters) without calling at any Japanese harbor facilities is prohibited.

1.6 If a MORU is deemed as a "ship" under the UNCLOS, this raises the additional question of how the right of innocent passage applies. It remains unclear whether the MORU and the tugboat should be treated as a single towing unit or as separate entities. There appears to be no definitive law, precedent, or scholarly consensus on this matter.

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))?

The answer to this Question is the same as our answer to Q1 of this “Questions related to innocent passage and transit”, except for the

restriction of navigation in a case of the foreign-flagged-tugboat proceeding through within territorial sea. In the case, the foreign-flagged-tugboat shall comply with Article 3 of the Foreign Ships Navigation Act. In principle, a foreign ship's passage through the Japanese territorial seas shall be continuous and expeditious. Within this restriction (continuously and expeditiously), her passage would be admitted.

### **Explanation:**

2.1 In relation to a right of innocent passage within the territorial sea, there are the following domestic laws;

#### **Act on Navigation of Foreign Ships through the Territorial Seas and Internal Waters (Act No. 64 of 2008)**

*Article 3 Passage of foreign ships in the Japanese territorial seas and internal waters shall be continuous and expeditious for the purpose of passing by the territorial seas or internal waters (limited to the newly established internal waters) or calling at harbor facilities.*

*Article 4, Paragraph 1. When navigating in the Japanese territorial seas and internal waters, Master of foreign ship is not allowed to make the following activities: (i)stopping..., (ii)anchoring..., (iii)mooring..., (iv) hovering or any other activity not having a direct bearing on passage...*

2.2 Based on Article 3 of the Foreign Ships Navigation Act, foreign ship's passage through the Japanese territorial seas shall be continuous and expeditious. To put this the other way around, within this restriction (continuously and expeditiously), foreign ship's passage will be admitted. This is related to a right of innocent passage provided in the UNCLOS.

2.3 As mentioned in our answers to Question 1 above, a MORU is unlikely to be deemed as a "ship" in the UNCLOS and the Japanese law above.

Under this premise, as mentioned above, a MORU, even if it is registered in a foreign country, being towed, will not enjoy a right of innocent passage which is given to a "ship" under the UNCLOS.

2.4 Therefore, our answer to this question is the same as that to Q1 above of this "Questions related to innocent passage and transit", except for the restriction of navigation in a case of the foreign-flagged-tugboat proceeding through within territorial sea. In the case, the foreign-flagged-tugboat shall comply with Article 3 of Foreign Ships Navigation Act. In principle, a foreign ship's passage through the Japanese territorial seas shall be

continuous and expeditious. Within this restriction (continuously and expeditiously), her passage would be admitted.

- 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?

Yes. Article 1(1) of the Penal Code (Act No.45 of 1907) provides that the Code applies to anyone who commits a crime within the territory of Japan. This article shows the principle of territorial criminal jurisdiction.

- 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?

Yes.

Article 3-2 of the Code of Civil Procedure (Act No.109 of 1996) adopts the defendant's domicile rule (*actor sequitur forum rei*), and in addition, Article 3-3 of the Code of Civil Procedure provides the civil jurisdiction over an action involving, *inter alia*, a contractual obligation as follows:

- **Code of Civil Procedure (Act No.109 of 1996)**  
<https://www.japaneselawtranslation.go.jp/ja/laws/view/2834>  
 (English translation is available also at  
[http://www.pilaj.jp/yearbook/YB\\_DATA/YB013/Y013A07.pdf](http://www.pilaj.jp/yearbook/YB_DATA/YB013/Y013A07.pdf))  
*Article 3-3 (Jurisdiction over an Action Involving a Contractual Obligation)*

*An action set forth in one of the following items may be filed with the Japanese courts in the case specified in said item:*

*(i) an action on a claim for performance of a contractual obligation; on a claim involving benevolent intervention in another's affairs that has been done, or unjust enrichment that has arisen, in connection with a contractual obligation; on a claim for damages due to nonperformance of a contractual obligation; or on any other claim involving a contractual obligation: if the contractually specified place for performance of the obligation is within Japan, or if the law of the place adopted under the contract gives a place within Japan as the place for performance of the obligation; ...*

*(iii) an action on a property right: if the subject matter of the claim is located within Japan, or if the action is a claim for the payment of*

*monies, and seizable property of the defendant is located within Japan (except when the value of such property is extremely low); ...*

*(v) an action against a person that conducts business in Japan (including a foreign company (meaning a foreign company as prescribed in Article 2, item (ii) of the Companies Act (Act No. 86 of 2005)) that continually carries out transactions in Japan): if said action involves the business that the person conducts in Japan;*

*(vi) an action based on a ship claim or any other claim secured by a ship: if the ship is located within Japan; ...*

*(viii) an action for a tort: if the place where the tort occurred is within Japan (excluding if the consequences of a wrongful act committed in a foreign country have arisen within Japan but it would not ordinarily have been possible to foresee those consequences arising within Japan);*

*(ix) an action for damages due to the collision of a ship or any other accident at sea: if the first place where the damaged ship docked is within Japan;*

*(x) an action related to a maritime rescue: if the place where the maritime rescue took place or the first place where the salvaged ship docked is within Japan;*

As mentioned in our answer to Q1 “Treatment of Domestic MORUs as property” of “Questions related to ownership and other property interests in MORUs”, we think that the civil courts in Japan are unlikely to recognise any category of MORUs as a “ship” or “vessel”. Therefore, in our view, the above (vi), (ix), and (x) of Article 3-3 of the Code of Civil Procedure are not applicable. On the other hand, the above (i), (iii), (v), and (viii) of the Code would be applicable. Moreover, a forum-selection clause is valid as far as it satisfies the requirements in Article 3-7 of Code of Civil Procedure and is not contrary to public policy.

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)?

Not applicable. There are no straits used for international navigation in the waters adjacent to Japanese seas.

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)?

Not applicable. Japan is not an archipelagic State stipulated in Article 46 of the UNCLOS.



**V. 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)?

Generally speaking, the answer is “No”.

Japanese Supreme Court on 21 July 2006 held that the private acts and/or ‘*acta jure gestionis*’ (management acts) other than the ‘*acta jure imperii*’ (sovereign right) were not immune from civil jurisdiction unless there were special circumstances.

Moreover, Article 8(1) of the Act on the Civil Jurisdiction of Japan with respect to Foreign States (Act No.24 of 2009) provides that “*A foreign state will not have immunity from jurisdiction with respect to judicial proceedings regarding commercial transactions (meaning contracts or transactions related to civil or commercial purchase or sale of goods, procurement of services, lending of money, or other matters (excluding labor contracts)...) between the foreign state and a citizen of a state other than the foreign state ... or a corporation or any other entity established based on the laws and regulations of the state other than the foreign state, that belongs to that state.*”  
<https://www.japaneselawtranslation.go.jp/ja/laws/view/3870/je>

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?

Not applicable.