MALTA MARITIME LAW ASSOCIATION'S

RESPONSES TO

CMI's First questionnaire from the CMI
Mobile Offshore Renewables Unit
International Working Group

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.**

   Article 2(1) of the Merchant Shipping Act, Chapter 234 of the Laws of Malta, defines a ship as meaning *"...every description of vessel used in navigation, whether self propelled or not, and it includes barges, pontoons, floating establishments, installations or structures, oil rigs and other similar vessels, and for those parts of the Act wherever applicable it shall also include a ship under construction".*

   In turn, the same Article provides for a rather obscure definition of vessel and simply provides that the term *" "vessel" includes any ship or boat, or any other description of vessel used in navigation".*

   The definition of "ship" under Maltese law is accordingly quite encompassing and expressly includes "*...floating establishments, installations or structures"* whether *"self propelled or not"* as capable of being classified as ships.

   Whilst we are not aware of any Maltese case law touching upon this matter, it is therefore not unreasonable to conclude that a MORU could fall within the ambits of the definition of "ship" under Maltese law.

   It should however be noted that the said definition does include a qualification which merits discussion. The attribution of "ship" would necessitate that a vessel is "used in navigation". Considering the very nature of MORUs, it would be prudent for the purposes of this questionnaire to explore whether this limitation could possibly hinder the classification of MORUs as ships in terms of Maltese law.

   Regrettably, we are not aware of any Maltese case law which sheds light on the interpretation or application of this qualification in respect to the definition of 'ship' under Article 2 of our Merchant Shipping Act.

Nevertheless, given that the Maltese Merchant Shipping Act is largely based on, and inspired by, the UK Merchant Shipping Act of 1894 (the '**UK MSA 1894'**), our courts are often guided by the English case law and jurists.

Whilst the Maltese Merchant Shipping Act has adopted *ad verbatim* the definition of "vessel" found under Section 742 of the UK MSA 1894, our definition of 'ship' is far more descriptive than its counterpart under the UK MSA 1894.[1] Nevertheless, it is also apparent that we inherited the "used in navigation" limitation from the definition of ship found in the UK MSA 1894. It is therefore not unreasonable to suggest that a Maltese court would be guided by English jurisprudence on the matter.

For the purposes of this questionnaire, we have carried out a cursory review of English jurisprudence on the matter;

- In **Steedman v Scofield**[2], Sheen J opined that:

  > "Navigation is the nautical art or science of conducting a ship from one place to another. The navigator must be able (1) to determine the ship's position and (2) to determine the future course or course to be steered to reach the intended destination. The word 'navigation' is also used to describe the action of navigating or ordered movement of ships on water. Hence 'navigable waters' means waters on which ships can be navigated."

- In **R v Goodwin,**[3] Lord Phillips CJ concluded that:

  > "…After considering these and other authorities, we have come to the conclusion that for a vessel to be "used in navigation" under the Merchant Shipping Acts it is not a necessary requirement that it should be used in transporting persons or property by water to an intended destination, although this may well have been what navigation usually involved when the early Merchant Shipping Acts were enacted.
  >
  > ….
  >
  > We have concluded that those authorities which confine "vessel used in navigation" to vessels which are used to make ordered progression over the water from one place to another are correctly decided."

- In **R v Carrick District Council ex p Prankerd,**[4] Lightman J concluded that:

  > "The relevant phrase is "used in navigation" as contrasted with the phrase "used for navigation." The phrase "used for navigation" connotes that the actual current use of the ship is for navigation purposes; by way of contrast, the phrase "used in navigation" connotes that (irrespective of the actual current use) the ship is actually or potentially capable of being used for

[1] Article 742 of the UK MSA simply provides that *""Ship" includes every description of vessel used in navigation not propelled by oars."*
[2] [1992] 2 Lloyd's Rep. 163
[3] [2006] 1 WLR 546
[4] [1999] QB 1119

navigation. According to the ordinary use of the English language a ship remains "used in navigation" though rendered incapable of navigation, so long as there is a reasonable expectation that it will regain its capacity to navigate."

- In **Perks v Clark**[5], the Court of Appeal was tasked with determining whether jack-up drilling rigs, which were towed from one location to another to drill oil, could be considered ships and thus used in navigation. In this judgment, Carnwath J concluded that:

  "So long as 'navigation' was a significant part of the function of the statute in question, the mere fact that it was incidental to some more specialised function such as dredging or the provision of accommodation did not take it outside the definition .... The function of conveying persons and cargo from place to place was not an essential characteristic".

Considering the above case law, we do not believe that the lack of self-propulsion or lengthy periods of 'stationary' positioning of MORUs would preclude such MORUs from the capacity of being "used in navigation". Therefore, it would not be unreasonable to conclude that a MORU could fall within the wide definition of 'ship' provided for under Maltese law.

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)?

On the assumption that such MORUs will still remain potentially capable of being used for navigation at some point, and relying on our above response as well as the findings in *R v Carrick District Council ex p Prankerd* (in so far as the Court's comparison between "used in navigation" and "used for navigation"), we believe that a MORU equipped with an integrated dynamic positioning or other station-keeping system would likely still be considered by a Maltese court as qualifying as a 'ship' in terms of definition found under Article 2(1) of our Merchant Shipping Act.

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

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.

In light of our response to Question 1 above, we are of the view that a MORU could be classified as a 'ship' and could thus legally be capable of being registered as a ship with the Maltese Ship Registry. Accordingly, the ownership interests therein could be recorded in the said public registry.

Having said that, and after consultation with the Maltese Registrar of Shipping and Seamen, to date there are no MORU registered in the Maltese Ship Registry.

[5] [2001] 2 Lloyd's Rep 431.

There are however a few mobile offshore drilling units (MODUs) which are registered as ships in the Maltese Ship Registry. Furthermore, whilst we believe that MORUs may fall within the definition of a 'ship' as described in the Merchant Shipping Act, it should be noted that there would be other important factors which must be considered as well as other conditions which would need to be satisfied, including but not limited to policy matters, eligibility issues,[6] statutory compliance with requirements in terms of *inter alia* safety, environment, insurance and liability as well as any other technical requirements imposed by the flag administration. All of the said criteria would therefore play a vital role as to whether a MORU can be registered as a 'ship' in Malta.

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

Subject to the above qualifications, it would need to be registered in the Maltese Merchant Ship Registry, which is a public register of ships administered by Transport Malta, a governmental authority falling under the auspices of the Ministry of Transport, Infrastructure, and Public Works.

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.**

Our response to this question is somewhat hypothetical since as stated above there are no known cases of MORU being registered as ships in Malta.

Nevertheless, if our assumption that MORUs can be categorised as a ship under Maltese law and is allowed to be registered as such with the flag adminstration, then arguably the natural consequences of same would be that it would be granted nationality and would be afforded the right to fly the Malta flag in accordance with Article 91 of the United Nations Law of the Sea Convention of 1982. Naturally, any ship afforded to right to fly the Malta flag shall be obliged to do so in accordance with ship registration provisions under Malta's Merchant Shipping Act.

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.**

Article 84A of the Merchant Shipping Act defines a bareboat charter as a "contract for the lease or sub-lease of a ship ..... for a stipulated period of time, by virtue of which the charterer shall acquire full control and complete possession of the ship, including the right to appoint her master and crew for the duration of the charter but excluding the right to sell or mortgage the ship".

[6] For instance, ships under six metres in length cannot be registered.

The bareboat charter registration in the Malta Ship Registry should be possible if the vessel is registered as a ship in a foreign register and bareboat chartered under the Malta flag as the overlying flag or alternatively registered as an operator under charter in terms of Article 19A et seq. of the Merchant Shipping Act pursuant to which both the owners and charterer's interests over the Malta flagged ship are recorded in the vessel's register.

Therefore, on the assumption that a MORU would be capable of being leased, and if it can be registered as a ship for the purposes of Maltese law, it follows that it would be technically also possible to register a bareboat charter with the Malta Ship Registry.

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?**

   If a MORU can be registered in the Maltese ship registry, it would be deemed a ship for all intents and purposes of law, with the consequence that it would be capable of arrest and all other rights and obligations generally available to a ship (see also our responses below to the questions related to arrest).

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.**

   Article 37B(1) of the Maltese Merchant Shipping Act provides that "*[a] ship may constitute security for a debt or other obligation either by agreement or by operation of the law as hereinafter provided.*" Furthermore, sub-article (2) states that "[*a] debt or other obligation may be secured* –

   (a) by means of a mortgage which is a special charge over a vessel, or

   (b) by a general hypothec which attaches to all the assets of a debtor including any vessel such debtor may own, or

   (c) by a special privilege upon the vessel:

   Provided that special privileges arise in virtue of law and no debt or other obligation other than those specified at law shall be secured by a special privilege

   If a MORU is capable of being classified as a ship as suggested in our response to question 1 above and is permitted to be registered under the Malta flag, then the above provisions would likewise apply to MORUs. In addition, it is possible to record certain charges over the ship, most notably a mortgage.

   Hypothecs are another security option available to financiers of Malta flagged vessels. Having said that, the ship mortgage is the *de facto* security of choice for practical and legal considerations. Notably, a registered hypothec is more complex to enforce, costly and provides a less predictable outcome.

The concept of maritime liens is *per se* alien under Maltese law, but we do have a list of claims which attract a special privilege over a vessel and which attach to the ship – however, these cannot be recorded in a ship's registry.

Additionally, as a ship registered in Malta, a MORU could also be susceptible to the imposition of a flag injunction as envisaged under Article 37 of our Merchant Shipping Act. Such an injunction would also be recorded in the register of the affected MORU.

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

Under Maltese law, a registered mortgage affords the holder of that security an extremely privileged position both in terms of enforcement but also in terms of ranking. Under Maltese law, a mortgage is considered as an 'executive title' and as such may be enforced as such, upon notice of a default being given in writing by the mortgagee to the mortgagor and without the need for lengthy judicial proceedings.

Article 54A of the Merchant Shipping Act expressly dictates that there are just a handful of claims which would rank before the mortgagee's claim.

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?**

Typically, the ownership of any property recorded and evidence in a foreign public register would be recognised in Malta.

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,

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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?

Our procedural laws, principally the Code of Organisation and Civil Procedure, Chapter 12 of the Laws of Malta do not contain a separate definition of ship. Accordingly, our Courts would refer to and apply the wide definition found in our Merchant Shipping Act, even when considering foreign vessels. On that

premise, it would be difficult to exclude the possibility that the foreign MORU may be capable of being arrested in Malta as a ship.

Issues could arise where the MORU is registered differently (i.e. as anything other than a ship) in another public registry. In such instances the MORU would likely not fly any flag and would not be vested with the nationality of any flag State. A court in Malta could be faced with two opposing classifications - namely a ship in accordance with our domestic law (i.e. as a ship) and differently in accordance with the foreign public registry. Nevertheless, it would be premature to speculate as to how a Maltese court would attempt to reconcile the position under that foreign law (as a non-ship) with the position under our own laws (classifying the MORU as a ship).

Assuming however that a MORU is not classified accordingly, then it would arguably not be possible to arrest a MORU as this interim measure is only possible in the context of ships.

Nevertheless, and in any event, our law would afford a creditor with the right to obtain other forms of security such as a warrant of seizure of movables, which could be used to seize the MORU – an interim measure applicable to all movables except for ships capable of being subjected to warrant of arrest.[7]

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

A foreign mortgage registered over a foreign flagged ship would be recognised as a mortgage with the same status as a Maltese registered mortgage (and may be enforced in a similar fashion) provided the requirements of Article 49 of our Merchant Shipping Act are satisfied.[8]

Assuming that a MORU is not regarded as a ship under Maltese law, then it would in our view not be possible to enforce the mortgage in the same manner as a Maltese ship mortgage. However, if the mortgagee or registered creditor has a judgment or enforceable title, a Maltese court would most likely recognize and subsequently enforce that judgment / enforceable title against the MORU as any other asset of the debtor.

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

As stated above, the concept of maritime liens is alien to our legal system. Under Maltese law, one finds a number of maritime claims which give rise to special privileges over a ship[9]. Having said that, these *ipso jure* privileges would only arise within the ambit of "ships".

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[7] For completeness sake, ships under 10 metres in length cannot be arrested and may also be subjected to the issuance of a warrant of seizure of movables.

[8] The requirements under Art 49 of the Maltese Merchant Shipping Act are as follows:
(a) such mortgage has been validly recorded in the registry of ships of the country under whose laws the ship is documented;
(b) such registry is a public registry;
(c) such mortgage appears upon a search of the registry and
(d) such mortgage is granted a preferential and generally equivalent status as a mortgage under this Act under the laws of the country where the mortgage is registered

[9] Article 50 of the Maltese Merchant Shipping Act.

d. any or all other purposes?

No, if a MORU does not fall within the ambit of the Maltese law definition of 'ship', then for all other purposes of law it would continue to not be recognised as same and cannot be afforded the same treatment as other ships. However, this question is hypothetical, as we believe that under Maltese law a MORU would fall within the definition of 'ship'– whether it can satisfy the technical requirements to get registered as a Maltese ship is still to be determined.

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?

Kindly refer to our response to para (b) above.

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?

No. In terms of ranking and priority, a Maltese court would always (included with foreign registered ship) apply the relevant provisions under our domestic law. Therefore, Maltese law as the *lex fori* would determine matters of ranking and 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?

Malta is not a state Party to either Convention.

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?

Whilst Malta has recently enacted its Exclusive Economic Zone Act, Chapter 625 of the Laws of Malta, to make provision for the establishment of an Exclusive Economic Zone or part thereof, the responsible Minister empowered to do so has yet to declare same. Accordingly, the change of ownership of a foreign-registered MORU beyond our twelve (12) nautical mile territorial sea would not be subject to Maltese jurisdiction and law. Presumably it would be regarded as being governed by the laws of that foreign jurisdiction where the MORU is registered in.

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

a. Foreign-owned but not registered, or

It is our assessment that it would still not be subject to Maltese law as it would be beyond our territorial sea limits.

b. operated in the territorial sea of your jurisdiction?

It is our assessment that it would be subject to the laws of Malta, including for instance our domestic fiscal laws and regulations.

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);**

    We are not aware of any reported decisions on this subject matter.

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

    We are not aware of any reported decisions on this matter, but arguably fixed offshore wind turbines would not be classified as ships for the reasons disclosed in our response to Question 1 above.

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

    We are not aware of any reported decisions on this subject matter but presently there are a few MODUs registered under the Maltese flag as ships.[10]

    d. **FSUs and FPSOs**

    We are not aware of any reported decisions on this subject matter but we are aware of FSUs registered under the Maltese flag as ships.[11]

    If so, please attach copies.

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)?**

    Yes, if a MORU is considered a ship as suggested above, it should be possible to arrest it.

    a. **If so, on what grounds?**

    It would be possible to either arrest a vessel to secure a right *in personam* or *in rem.* An arrest to secure *in personam* rights may be obtianed against ship just as one would obtain any other interim measures against any asset forming part of the debtor's patrimony or estate. The nature of the claim need not be maritime related.

    Conversely, an arrest for a claim *in rem* is only possible when the nature of the debt is one of the maritime claims listed in Article 742B of our Code of

[10] By way of some examples, Drilling Jack Ups GSP PROMETEU (IMO: 8767654) and GSP Jupiter (IMO 8767642).
[11] For instance, the ARMADA LNG MEDITERRANA (IMO 8125868) and the ENERGOS POWER (IMO 9861809).

Organisation and Civil Procedure. Moreover, an arresting creditor would also need to satisfy the so-called 'relevant person' test (which generally permits an arrest for owners' claims and bareboat charterers' claims). That being said, if the debt attracts a special privilege under Article 50 of the Maltese Merchant Shipping Act, then the creditor may proceed to arrest the ship irrespective of ownership.

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

Malta is not a State party to either of the Arrest Conventions. Ship arrest in Malta is governed purely by our domestic laws (the provisions in our Code of Organisation and Civil Procedure).

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

Yes, it is possible to arrest a MORU as a ship to secure a claim *in personam* where the debtor is the registered owner of the ship, just as a creditor may seize any other asset of that particular debtor. The claims would not necessarily need to be of a maritime related nature.

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.**

As with any other ship, whether Maltese flagged or otherwise, our courts would allow adequate alternative security to be provided for the purposes of lifting an arrest. This may be done by depositing monies or a bank guarantee issued by a local bank into court. It is however common practice for lawyers to also accept a letter of undertaking from a reputable P&I Club but an arresting creditor cannot be compelled to accept same.[12]

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?")?**

Malta is a party to the 1976 Convention on Limitation of Liability for Maritime Claims, as amended by the Protocol of 1996 thereto ("**the LLMC Convention**"). The provisions of the said Convention have been transposed into our domestic

[12] It should be noted that the authors of this Questionnaire are not aware whether any P&I Clubs presently offer coverage to MORUs.

law by means of the Limitation of Liability for Maritime Claims Regulations, Subsidiary Legislation 234.16 (the '**LLMC Regulations**').

Whilst the Convention does not provide a definition of what constitutes a seagoing ship, our LLMC Regulation provides some further guidance on the scope of application of the Convention in this regard. Regulation 6 of the LLMC Regulations provides as follows:

"6. References in the Convention and in these regulations to a "ship" include references to any structure, whether completed or in the course of completion, launched or intended for use in navigation as a ship or part of a ship, and shall apply to any barge or like vessel however propelled, and the expression "ship" shall be construed accordingly"

Regulation 6 appears to be additional (and complementary) to the definition of 'ship' found under Art 2(1) of the Maltese Merchant Shipping Act. Therefore, we are of the view, that a MORU would still for the purposes of Maltese law be a ship falling within scope of the LLMC Convention. It should be noted that the LLMC Convention only applies to sea-going ships. Nevertheless, on the assumption that all MORUs are intended for open waters, then this limitation should not change or alter the conclusion above that Maltese law permits the owner or salvor of a MORU to benefit from the limitations of liability under the LLMC 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?**

Maltese law does not provide for a definition of "floating platform". That being said, it does not appear to exclude a ship from also being classified as a floating platform.[13] Whilst it cannot be excluded that a MORU might be construed by our courts as being a ship which is a floating platform, Article 15(5)(b) would only apply where the floating platform *"was constructed for the purpose of exploring or exploiting the natural resources of the sea-bed or the sub-soil thereof".* Whilst MORUs are indeed constructed to exploit natural resources such as wind or solar energy, their purpose is not for exploring or exploiting the natural resources of the seabed or its sub-soil and consequently, we believe that they should not be construed as such.

Accordingly, we are of the view that a MORU would not fall within the ambits of the exclusion of Article 15(5)(b) of the LLMC Convention. Whilst this matter has

[13] By way of example Article 6 of the Merchant Shipping (Prevention of Pollution by Garbage) Regulations, 2003 regulates the disposal into the sea of any garbage "from a ship which is a fixed or floating platform engaged in the exploration, exploitation and associated offshore processing of seabed mineral resources..." Furthermore, the definition of "ship" under Article 2(1) of the Merchant Shipping Act includes "floating establishments".

never been tested by a court of law in Malta, in our opinion the owner or salvor of a MORU could still be entitled to benefit from the limitations of liability under the LLMC Convention.

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, a MORU would not be able to benefit from any other (non-LLMC based) forms of limitations of liability under Maltese law.

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))?**

   On the assumption that Maltese law would recognise a MORU as a ship, the right of innocent passage under Article 8(2) of the United Nations Law of the Sea Convention 1982 ("UNCLOS 1982") would be recognized provided such passage is indeed innocent. Nevertheless, even if for argument's sake a MORU was not recognized as a ship, then arguable it could be considered as the tow of another ship (the tug) exercising its right of innocent passage under UNCLOS 1982.

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))?**

   Our response to this question is materially the same to question 1 above, and the right of innocent passage under Articles 17 and 24(1) of UNCLOS 1982 would be recognized provided such passage is indeed innocent in accordance with the provisions of Articles 17 to 19 of UNCLOS.

   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?**

      No, it would not.

   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?**

      No, it would not.

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)?

Ther are no straits used for international navigation in the waters adjacent to our jurisdiction.

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))?

   Yes, it would.

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)?

   Whilst Malta does not have an act or any specific legislation on sovereign immunity. In the landmark judgment *AWT Handels Gesellschaft mbH v Il-bastiment M/V Dmitriy Polujan,*[14] the Court declared that in view of the absence of any sovereign immunity act our courts are to be guided by the position under English law. Our courts would most likely adhere to the doctrine of restrictive immunity; differentiating between the actions of a state which would be tantamount to public or governmental acts which could attract immunity (*acta iure imperii*) and those relating to private or trade activity which do not attract immunity (*acta iure gestionis*). Accordingly, the matter must be approached on a case-by-case basis.

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

   Yes, the Maltese government may voluntarily waive its sovereign immunity.

[14] Civil Court, First Hall, decided on 10.12.1997