First Questionnaire from the CMI Mobile Offshore Renewables Unit (MORU) International Working Group

I. QUESTIONS RELATED TO OWNERSHIP AND OTHER PROPERTY INTERESTS IN MORUs

A. Treatment of Domestic MORUs as property

(1) Would the courts in your jurisdiction, recognize any (or all) 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.

1. In Singapore, the definition of "vessel" and "ship" generally varies from one statute to another. For example, the definition of a "ship" under the Merchant Shipping Act 1995 (for the purposes of (say) registration) ("**MSA 1995**") differs from the definition of a "ship" under the High Court (Admiralty Jurisdiction) Act 1961 (for the purposes of invoking the court's *in rem* jurisdiction) ("**HCAJA**").

2. Where a statute does not expressly define these terms, then (by default) under the Interpretation Act 1965, a "ship" will be construed as including "every description of vessel used in navigation not exclusively propelled by oars or paddles" and a "vessel" will be defined as including "floating craft of every description."

3. Accordingly, whether the Singapore Court will recognise any or all categories of MORU as a "vessel" or "ship" or other "marine equipment", etc. will depend on the statute under which the recognition of the MORU as a "ship" or "vessel" is sought.

4. The Singapore High Court case of *Vallianz Shipbuilding & Engineering Pte Ltd v Owner of the vessel "ECO SPARK"* [2024] 4 SLR 784 ("***Eco Spark***") is the most recent decision on what is meant by a "ship" for the purposes of invoking the court's *in rem* jurisdiction under the HCAJA.

5. In *Eco Spark*, the Defendant applied to strike out and set aside an admiralty originating claim *in rem* commenced by the Claimant against the Defendant's floating fish farm (which was converted from a steel dumb barge) and to set aside the warrant of arrest issued against the same. The basis of the Defendant's application was that the floating

fish farm was not a "ship" within the meaning of Section 2 of the HCAJA and that the court therefore did not possess admiralty *in rem* jurisdiction.

6. In the process of determining whether the floating fish farm was a "ship", the High Court cautioned that any jurisprudence on the definition of a "ship" must be looked at bearing in mind the context and/or the purpose for which the definition was proposed in any particular case, as well as the specific phraseology in the relevant statute defining a "ship".[1] Put in another way, the definition of "ship" for the purposes of invoking admiralty *in rem* jurisdiction under the HCAJA may differ from the definition of a "ship" for the purposes of registration etc. and therefore an object defined as a "ship" in one context may not apply in another.

7. For context, the HCAJA defines a "ship" as "*[including] any description of vessel used in navigation*". The term "vessel" is not defined in the HCAJA but as mentioned above, under the Interpretation Act 1965, it will be construed to include "*floating craft of every description*". In the *Eco Spark*, it was not disputed by parties that the floating fish farm was a floating craft (i.e., a "vessel" within meaning of HCAJA). The contention between parties turned on the definition of the phrase "used in navigation".[2]

8. Nevertheless, the High Court in *Eco Spark* held that the inquiry as to whether an object is a "ship" is a multi-factorial inquiry which takes into consideration a list of *indicia* when classifying and/or recognising an object as a "ship" or vessel "used in navigation".[3] No one *indicium* and/or characteristic is determinative of classifying an object as a "ship" or vessel "used in navigation" and the assessment of such characteristics (or lack thereof) is to be done in totality.

9. The High Court held that the existing jurisprudence espousing an "irreducible minimum" characteristic of defining a "ship" should be directed towards the "*capability of the vessel to be used in navigation as a matter of its physical design and construction, i.e., whether it is navigable and built to withstand perils of the sea, irrespective of its actual current use*".[4] In the context of the HCAJA, the High Court in *Eco Spark* held that "*if a vessel is* ***designed and capable of being used in navigation, that should be a weighty consideration that the vessel falls within the definition of 'ship' under s***

[1] *The "Eco Spark"* [2024] 4 SLR 784 at [28]
[2] *The "Eco Spark"* [2024] 4 SLR 784 at [23]
[3] *The "Eco Spark"* [2024] 4 SLR 784 at [69]
[4] *The "Eco Spark"* [2024] 4 SLR 784 at [70]

2 of the HCAJA. *Among others, the navigability of a vessel is what gives rise to the risk and danger of it having the ability to be removed from a jurisdiction, thereby defeating legitimate in rem claims*."[5]

10. Applying the *Eco Spark* to MORUs, it is likely that MORUs will be regarded as "vessels" for the purposes of the HCAJA if they are floating crafts. The more relevant question is whether a MORU is "used in navigation". The salient and related characteristics the High Court considered that would render a vessel being classified as capable of being "used in navigation" include the degree of the vessel's stability, unwieldiness of the vessel and stationariness.

    (a) **Stability:** This factor considers not just whether the vessel is technically capable of traversing the surface of water, but whether the vessel is capable of being moved across the water in a stable manner. If significant external work and great care is required to ensure the vessel's stability, then the vessel would lack sufficient stability for it to be capable of being used in navigation.

    (b) **Unwieldiness:** If the vessel is large and/or difficult to manoeuvre as a physical structure, it is unlikely that it is capable of being used in navigation.

    (c) **Stationariness:** This is a factor that undermines navigability and looks at the degree to which the vessel is moored or secured to land and the extent of work that needs to be done to remove the vessel from her moorage for navigation to be possible.

11. Considering the above, if these factors weigh in favour of a MORU (e.g., the MORU is stable, easily manoeuvrable and not always stationary), then in all likelihood, it will be classified as a "ship" for the purposes of the HCAJA.

    (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 autonomously directed system)?

12. As mentioned above, insofar as the HCAJA is concerned, the Singapore Courts adopt a multi-factorial inquiry which takes into consideration a list of *indicia* when classifying

[5] *The "Eco Spark"* [2024] 4 SLR 784 at [71]

and/or recognising an object as a "ship" or vessel "used in navigation".[6] No one *indicium* and/or characteristic is determinative of classifying an object as a "ship" or vessel "used in navigation" and the assessment is to be done.

13. Accordingly, if the MORU is equipped with integrated dynamic positioning or other station-keeping system, this may indicate that the MORU is stable and manoeuvrable but this would not conclusively determine the issue of whether the MORU would be regarded as a "ship"; it would only be a factor which the Singapore Court will take into account.

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

14. The registration of ships is governed by the MSA 1995 and its subsidiary legislation, including the Merchant Shipping (Registration of Ships) Regulations ("**MS(RS)R**"). The relevant governmental body in Singapore that regulates and enforces the MSA 1995 and the MS(RS)R is the Maritime and Port Authority of Singapore ("**MPA**").

15. Section 2 (1) of the MSA 1995 defines a "ship" as "*any kind of vessel used in navigation by water, however propelled or moved and includes – (a) a barge, lighter or other floating vessel; (b) an air-cushion vehicle, or other similar craft, used wholly or primarily in navigation by water; and (c) an off-shore industry mobile unit*".

16. Part 2 of the MSA 1995 regulates the application of and conditions thereto for application to the Singapore Registry. Section 7 of the MSA 1995 states expressly that "*this Part [2] does not apply to any fishing vessel, that is to say, any ship which is for the time being used for fishing or processing fish*". Section 8(1) of the MSA 1995 states that "*[t]he Authority may, with the approval of the Minister, make regulations prescribing the conditions for the registration of a ship as a Singapore ship*".[7]

17. It may be possible to record ownership interests in any (or all) of the categories of MORU in the Singapore Registry of Ships if all of the following are satisfied: (1) the pre-requisites for registration are met; (2) reservation of the vessel name with the Registrar of Ships; (3) submission of relevant documents required for provisional or

[6] *The "Eco Spark"* [2024] 4 SLR 784 at [69]
[7] https://sso.agc.gov.sg/Act/MSA1995?ProvIds=P12-#pr8-

permanent registration; and (4) payment of registration fees and annual tonnage tax fees.[8]

18. In this regard, the MPA has stated on its website that: "*except for fishing vessels, hydrofoils and wooden vessels, registration is open to **all types of ships**, including offshore vessels such as oil rigs and floating platforms*" **and** "*dispensations may be considered for vessels under special operating circumstances. Equipment and arrangements approved by other maritime administrations that comply with the IMO Conventions are generally accepted*".[9]

(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.

19. Section 8(1) of the MSA 1995 prescribes that the MPA may "*with approval of the Minister, make regulations prescribing the conditions for the registration of a ship as a **Singapore ship***".[10] Therefore, upon a successful application for registration, the MORU will be registered as a "Singapore ship". The term "Singapore ship" will necessarily include the definition of "ship" as defined in Section 2(1) of the MSA 1995 (see paragraph 15 above).

20. A "Singapore ship" is defined in Section 2(1) of the MSA 1995 as "*a **ship** registered, provisionally or otherwise, under Part 2 and its registry is not closed or deemed to be closed or suspended under that Part*".

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

21. It would be registered in the Singapore Registry of Ships.

(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 authorities.

[8] https://www.mpa.gov.sg/singapore-registry-of-ships/about-srs/overview-of-ship-registration
[9] https://www.mpa.gov.sg/singapore-registry-of-ships/about-srs/pre-requisites-for-ship-registration
[10] https://sso.agc.gov.sg/Act/MSA1995?ProvIds=P12-#pr8-

22. If a MORU is registered in the Singapore Registry of Ships, it must fly the flag (i.e., the national colours) of Singapore.[11]

23. Pursuant to Section 36(1) of the MSA 1995 the Minister is to prescribe an ensign, which is the proper national colours for a Singapore ship.

24. Section 36(2) of the MSA 1995 makes it an offence "*if any distinctive national colours other than the said ensign are hoisted on board any Singapore ship without consent of the Minister*".

(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.

25. Part VI of the MS(RS)R provides the regulations for registration of bareboat chartered ships in the registry of bareboat charter ships (the "**Bareboat Registry**").

26. Both bareboat charter "in" and bareboat charter "out" vessels may be registered in the Bareboat Registry. For the purposes of answering this question, only bareboat charter "out" vessels are of concern as it deals with Singapore registered ships.

27. Pursuant to Regulation 31(1) of the MS(RS)R, a Singapore ship may be bareboat chartered out and registered outside of Singapore in the name of the bareboat charterer, and its registry as a Singapore ship may be suspended during the charter period. The suspension may be effected by way of application to the MPA for suspension of a Singapore ship's registry.[12]

28. Pursuant to Regulation 31(2) of the MS(RS)R the applicant must submit the following: (a) a certified copy of the charterparty; (b) a certified transcript of the register or a similar document showing the bareboat registration of the vessel; and (c) a certificate of Singapore Registry for the vessel.

[11] https://www.mpa.gov.sg/media-centre/details/no-13-of-1999---national-colours-for-singapore-ships
[12] https://www.mpa.gov.sg/singapore-registry-of-ships/register-with-srs/type-of-registrations/bareboat-charter-out-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" 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?

29. The acceptance by a registrar or other governmental body of a MORU as a "ship" or "vessel" is not equivalent to its legal status as a "ship" or "vessel" under Singapore law for purposes other than registration. In this regard, it should be noted that there are various definitions of "ship" and "vessel" in the body of Singapore legislation. For example, the definition of "ship" in the MSA 1995 which governs *inter alia*, registration of ships is different from the definition of "ship" in the HCAJA which is an act related to admiralty jurisdiction. Section 2 of the HCAJA defines "ship" as "*any description of vessel used in navigation*".[13]

30. In the context of invoking the Singapore Courts' admiralty *in rem* jurisdiction pursuant to the HCAJA there is judicial authority stating that the acceptance and registration of a vessel by the Singapore Registry of Ships its "*not determinative of the status of a vessel as a 'ship'*" and "*the absence and /or existence of registration to a flag state*" only serves as an *indicium* as to whether a vessel is a "ship" and/or "used in navigation" when determining whether a vessel is a ship for the purposes of the HCAJA.[14]

(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.

31. It is possible to record a mortgage on a vessel in the Singapore Ship Registry as soon as the same is registered upon presentation of the instrument of mortgage (in the prescribed form from the Singapore Registry of Ships).[15] In the case of a provisionally registered vessel where the original document of ownership has not been submitted, the mortgage will only be recorded upon confirmation by the mortgagee that they have

[13] https://sso.agc.gov.sg/Act/HCAJA1961#pr2-
[14] *The "Eco Spark"* [2024] 4 SLR 784 at [89]
[15] https://www.mpa.gov.sg/docs/mpalibraries/mpa-documents-files/shipping-division/singapore-registry-of-ships/register-with-srs/registration-procedure/registration-guide---aug-2024.pdf?sfvrsn=3081a288_0 at para 6.1

sighted the original documents.[16] That said pursuant to Regulation 30(2) of the MS(RS)R, no mortgages shall be recorded in the Bareboat Registry.

32. As registration of mortgages is not compulsory under Singapore law, in the event of non-registration of a mortgage, an unregistered mortgage will rank below a registered mortgage even if it was created before the statutory mortgage was registered and even if the registered mortgage had notice of the earlier mortgage. This is of course subject to the rule that the registered mortgagee will not have priority where it has notice of the earlier mortgage and is in bad faith, or if the earlier interest was, in fact, not registrable.[17]

33. Further, every Bill of Sale for the transfer of a Singapore vessel or any share therein must be produced for registration and will be registered in the order of production if there is more than one Bill of Sale. Where the transferee is a person qualified to own a Singapore vessel, the Bill of Sale must be in the prescribed form. The vessel must be registered anew or its registry closed within 60 days of the date on which the Bill of Sale (or the first Bill of Sale if there is more than one Bill of Sale) is registered, failing which the registry will be closed by operation of the law. The Bill of Sale will not be recorded if there are subsisting mortgages (unless the mortgagee gives his consent in writing), unpaid fees, outstanding claims of the master or seamen, or any subsisting court order prohibiting any dealing with the vessel.[18]

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

34. Priority is given to a registered mortgagee on a first-in-time basis. Pursuant to Section 28 of the MSA 1995, "*[i]f there are more than one mortgages registered in respect of the same ship or share, the mortgagees must, despite any express, implied or constructive notice,* ***be entitled in priority one over the other, according to the date and time of the record of each mortgage in the register and not according to the date of each mortgage itself***".[19]

B. Treatment of Foreign MORUs as property

[16] https://www.mpa.gov.sg/docs/mpalibraries/mpa-documents-files/shipping-division/singapore-registry-of-ships/register-with-srs/registration-procedure/registration-guide---aug-2024.pdf?sfvrsn=3081a288_0 at para 6.2
[17] https://law.nus.edu.sg/wp-content/uploads/2020/04/015_2019_StephenGirvin.pdf at p 19
[18] https://www.mpa.gov.sg/docs/mpalibraries/mpa-documents-files/shipping-division/singapore-registry-of-ships/register-with-srs/registration-procedure/registration-guide---aug-2024.pdf?sfvrsn=3081a288_0 at para 7
[19] https://sso.agc.gov.sg/Act/MSA1995?ProvIds=P12-#pr28-

(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?

35. While a certificate of registration is not conclusive evidence of who the beneficial owners of a ship are (for the purposes of jurisdiction), it is at least *prima facie* evidence of the registered owner being the true owner, and results in a shifting of burden of proof. Whoever, without being registered, claims ownership must displace that *prima facie* evidence.[20]

36. Singapore law recognises both (i) the long-standing practice enshrined in public international law that has required every merchant ship to carry "ship's papers" to test the nationality and ownership of the ship and (ii) the modern function of the certificate of registration which fulfils the dual function of proclaiming the nationality and ownership of the ship.[21]

37. That said, any matters relating to evidence disputing the *prima facie* evidence of ownership will be determined by application of Singapore evidence law.[22]

(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?

38. If the MORU would not be considered a "vessel" or "ship" under domestic laws, and more specifically pursuant to the HCAJA which is relevant for invoking *in rem* admiralty jurisdiction, then it appears that it would not be possible for the Singapore Courts to nonetheless treat the same as a "vessel" or "ship" for the purposes of arrest.

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

[20] *The "Kapitan Temkin"* [1998] 2 SLR(R) 537 at [7]
[21] *The "Kapitan Temkin"* [1998] 2 SLR(R) 537 at [7]
[22] *The "Kapitan Temkin"* [1998] 2 SLR(R) 537 at [14]

39. It is possible to foreclose on a mortgage over the MORU if the MORU is regarded as a chattel and the mortgage is a valid and enforceable chattel mortgage. In such a situation, the mortgage over the MORU may be enforced in the same was as any other chattel mortgage.

40. We are not aware of any instances where a hypothecation over a ship has been enforced in Singapore. However, if the hypothecation gives rise to a lien or a charge over the MORU, there is no reason why it cannot be enforced in Singapore in the same way that any lien or charge over chattels are enforced.

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

41. If the MORU would not be considered a "vessel" or "ship" under Singapore law, then the Singapore Courts would not enforce a maritime lien on the MORU.

(d) any or all other purposes?

42. If the MORU would not be considered a "vessel" or "ship" under Singapore law, then it is unlikely that Singapore Courts would still treat the MORU as a ship or vessel. In all likelihood, the MORU will be treated as a chattel in the same way that any other chattel is treated.

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?

43. If the (foreign) MORU is not recognised as a vessel or ship in Singapore, then it would not be possible to treat the MORU as a vessel or ship for the purposes of the enforcement of any claim or mortgage. However, there is no reason why the Singapore Court should not treat the MORU as a chattel for the purposes of the enforcement of any non-maritime claim or chattel mortgage against the MORU.

(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?

44. No, the priority of "lienors" (i.e. the party who has a lien over the property) and recorded creditors will be determined by Singapore law.

(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?

45. Singapore is neither a party to (i) the International Convention for the Unification of Certain Rules of Law relating to Maritime Liens and Mortgages 1926 nor (ii) the International Convention on Maritime Liens and Mortgages 1993.

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

46. The validity of a transfer (i.e., sale or change of ownership) of a MORU (as movable property) is governed by the law of the country where the MORU is at the time of the transfer (i.e., the *lex situs*).

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?

47. Our answer would not vary based on the scenarios listed in (a) and (b).

(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.

48. There are no reported decisions in Singapore addressing the legal classification of the objects listed in (a) to (d) above. There are however reported decisions addressing the classification of (i) a floating fish farm (*"ECO SPARK"* [2024] 4 SLR 784) and (ii) a dumb barge (*See Toh Siew Kee v Ho Ah Lam Ferrocement (Pte) Ltd and others* [2012] 3 SLR 227).

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?

49. If the MORU is regarded as a ship under the HCAJA and the requirements for an arrest under Singapore law and the HCAJA are satisfied, then generally speaking it is possible to proceed *in rem* to arrest the MORU.

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

50. It will be determined by Singapore's domestic maritime law.

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

51. It is not possible to arrest a MORU for a non-maritime claim under the HCAJA. It is possible however to obtain an injunction over the MORU (e.g., to prevent the MORU from leaving port) if the requirements for an injunction are satisfied. It is also possible to seize a MORU under a writ of seizure and sale ("**WSS**") to enforce a non-maritime claim if the judgment creditor has obtained judgment against the owner of the MORU in respect of the non-maritime claim and the requirements for enforcement by way of a WSS are satisfied.

52. Whilst it is not possible to proceed *in rem* against the MORU for non-maritime claims, it is possible to proceed *in personam* against the owner of the MORU for non-maritime claims.

(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.

53. If the MORU is a ship arrested under the HCAJA, it is generally possible to obtain a release of the MORU from arrest upon the posting of adequate security. The owner of the MORU may furnish security by way of a bail bond or any other form of security as may be agreed between the parties, e.g., a P&I Club letter of undertaking or a bank guarantee. If the arresting party's claim is satisfied or security is provided to secure the claim, the owner of the arrested MORU may apply for issue of an instrument of release to release the same.[23] A helpful admiralty court guide on release of ships under arrest may be accessed here: https://www.judiciary.gov.sg/docs/default-source/news-and-resources-docs/admiralty-court-guide/roc-2021-admiralty-court-guide.pdf?sfvrsn=cf27c732_2.

54. If the MORU is not arrested under the HCAJA but is otherwise detained or held as security (e.g., by a shipyard exercising a possessory lien over the MORU), it is possible under our Rules of Court[24] to apply to Court for an order that the property (i.e., the MORU) be handed over or transferred to the owner before trial if (i) the owner can show that its title to the property is not in dispute and (ii) the owner pays into Court or provides security for the value of the property or the value of the claim for which the property is held as security, whichever is the lower.

55. If a MORU is detained by the Singapore authorities pursuant to applicable laws or regulations which permits such detention (e.g., the detention of an unsafe ship,[25] the detention of a ship for oil pollution,[26] etc.), then the release of the MORU would depend on the provisions of such laws and regulations. Such laws and regulations may not necessarily permit the release of property upon the posting of adequate security.

[23] https://www.judiciary.gov.sg/docs/default-source/news-and-resources-docs/admiralty-court-guide/roc-2021-admiralty-court-guide.pdf?sfvrsn=cf27c732_2 at p 15
[24] Order 13 Rule 5 of the Rules of Court 2021
[25] Section 113 of the MSA 1995
[26] Section 20 of the Merchant Shipping (Civil Liability and Compensation for Oil Pollution) Act 1998

III. QUESTIONS RELATED TO LIMITATIONS OF LIABILITY

(1) Assuming that a MORU was not used for the purposes 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?")?

56. Singapore is a party to the Convention on Limitation of Liability for Maritime Claims 1976 as amended by the Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claim, 1976 ("**Protocol**") and the 2012 amendments to the Protocol ("**LLMC**").

57. Pursuant to Part 8 of the MSA 1995 and in particular Section 136 thereof, the LLMC as set out in the First Schedule of the MSA 1995 (save for paragraph 1(d) and (e) of Article 2) is given the force of law in Singapore.

58. However, the LLMC as set out in the First Schedule of the MSA 1995 does not include Article 15(5) of the LLMC. Accordingly, Article 15(5) of the LLMC does not apply in Singapore.

59. In light of the foregoing and in the absence of any reported judgments in Singapore to the contrary, the owner or salvor of a MORU may benefit from limitation of liability under the LLMC if the MORU in question satisfies the definition of "ship" under Section 134 of the MSA 1995 which states that for the purpose of the LLMC (as enacted in Singapore), a "ship" includes "(a) any air-cushion vehicle designed to operate in or over water while so operating; and (b) any structure (whether completed or in the course of completion) launched and intended for use in navigation as a ship or part of a ship."

60. While we note that MORU is defined as not self-propelled, and must be towed by commercial tugs for relocation, the lack of ability to self-propel does not itself prevent a MORU from satisfying the definition of "ship" under Section 134(b) of the MSA 1995. This point was recognised in the recent case of the *Eco Spark*, albeit under the context of the HCAJA, which adopts a similar language. The High Court in *Eco Spark* held that the ability to self-propel, *inter alia*, is one of many physical *indicia* of a ship but "*the*

absence of these physical indicia was not determinative and a vessel lacking these elements might still be a ship".[27] The fact that, in some cases, towage of MORU has been greater than 100 nm and some have crossed maritime boundaries is a good indication of those MORUs' capability of navigation. However, every MORU must be assessed on a case-by-case basis.

61. The MORU in question, however, does not necessarily need to be seagoing because Section 136(4) of the MSA 1995 clarifies that the right to limit liability under the LLMC (as enacted in Singapore) applies in relation to any ship whether seagoing or not.

(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?

62. Please see the response to Question III(1) above.

(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.

63. Apart from the LLMC (as enacted in Singapore pursuant to the MSA 1995), there are several other domestic statutes under which a MORU may be able to limit its liability, if the MORU satisfies the requirements therein for doing so.

64. As far as we are aware, however, there are no reported judgments in Singapore which have decided whether a MORU is entitled to limit its liability under these statutes.

Merchant Shipping (Civil Liability and Compensation for Oil Pollution) Act 1998

65. Singapore is a party to the International Convention on Civil Liability for Oil Pollution Damage 1992 and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992, which are given

[27] The *"Eco Spark"* [2024] 4 SLR 784 at [73]

effect to by the Merchant Shipping (Civil Liability and Compensation for Oil Pollution) Act 1998 ("**CLC Act**").

66. Section 3 of the CLC Act imposes strict liability on the owner of a ship for oil pollution where, as a result of any occurrence, (1) any oil is discharged or escapes from a ship or (2) there arises a grave and imminent threat of damage being caused outside the ship by the contamination that might result if there were a discharge or an escape of oil from the ship.

67. For the purposes of the CLC Act, "*oil*" means "*any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil, whether carried on board a ship as cargo or in the bunkers of such a ship*".

68. In general, the owner of a MORU may be liable for oil pollution and limit his liability in respect of the same pursuant to the provisions of the CLC Act if, *inter alia*:

(a) the MORU falls within the definition of "*ship*" under Section 2 of the CLC Act i.e., "*any sea-going vessel and seaborne craft of any type*"; and

(b) the MORU is constructed or adapted for carrying oil in bulk as cargo.

69. However, given the MORU's definition in relation to renewable energy, it is presumably not constructed or adapted to carry oil as cargo. Therefore, the application of the CLC Act to MORU would be limited.

Merchant Shipping (Civil Liability and Compensation for Bunker Oil Pollution) Act 2008 ("Bunker Act")

70. Singapore is a party to the International Convention International Convention on Civil Liability for Bunker Oil Pollution Damage 2001, which is given effect to by the Merchant Shipping (Civil Liability and Compensation for Bunker Oil Pollution) Act 2008 ("**Bunker Act**").

71. Section 3 of the Bunker Act imposes strict liability on the owner of a ship for bunker oil pollution where, as a result of any occurrence, (1) any bunker oil is discharged or escapes from a ship or (2) there arises a grave and imminent threat of damage being

caused outside the ship by the contamination that might result if there were a discharge or an escape of bunker oil from the ship.

72. For the purposes of the Bunker Act, "*bunker oil*" means "*any hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of a ship, and any residues of such oil*".

73. In general, the owner of a MORU may be liable for bunker oil pollution and limit his liability in respect of the same pursuant to the provisions of the Bunker Act if, *inter alia*:

(a) the MORU falls within the definition of "*ship*" under Section 2 of the Bunker Act i.e., "*any sea-going vessel and seaborne craft of any type*"; and

(b) the MORU is a ship to which the CLC Act does not apply.

74. Given that the MORU is not self-propelled, the Bunker Act will only apply to MORU in limited situations where pollution is caused by oil used or intended to be used for the operation of the MORU.

Merchant Shipping (Wreck Removal) Act 2017

75. Singapore is a party to the Nairobi International Convention on the Removal of Wrecks, 2007, which is given effect to by the Merchant Shipping (Wreck Removal) Act 2017 ("**Wreck Removal Act**").

76. The registered shipowner of a ship may incur liability under Section 10 of the Wreck Removal Act if, *inter alia*, the ship is involved in a maritime casualty resulting in a wreck in Singapore's Convention area, and costs are incurred by the Director of Marine for locating, marking and removing the wreck pursuant to Part 3 of the Wreck Removal Act.

77. If the registered shipowner of a ship incurs liability under Section 10 of the Wreck Removal Act, that liability may be limited in accordance with and in the manner provided in Part 8 of the MSA 1995, as if paragraph 1(d) and (e) of Article 2 of the LLMC has the force of law in Singapore.

78. Consequently, the owner of a MORU may incur liability under Section 10 of the Wreck Removal Act and limit that liability if, *inter alia*, the MORU in question falls within the definition of "*ship*" under the Wreck Removal Act, i.e., "*a seagoing vessel of any type whatsoever, and includes hydrofoil boats, air cushion vehicles, submersibles, floating craft and floating platforms, except when those platforms are on location engaged in the exploration, exploitation or production of seabed mineral resources*".

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))?

79. Singapore signed and ratified UNCLOS on 10 December 1982 and 17 November 1994 respectively. Singapore's internal waters is defined in the Maritime and Port Authority of Singapore (Port Limits) Notification 2010.

80. Under UNCLOS Art. 8(2), Singapore would recognise the right of innocent passage through Singapore's internal waters if the MORU in question is itself, or in combination with the towing vessel, a ship under the UNCLOS.[28]

(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))?

81. Where a foreign-registered MORU is being towed through Singapore's territorial sea, Singapore would recognise the MORU's right of innocent passage through Singapore's territorial sea if the MORU in question is itself, or in combination with the towing vessel, a ship under UNCLOS.

82. It should be noted that the exercise of 'innocent passage' is subject to Singapore domestic legislation relating to the matters provided under UNCLOS Art. 21(1), which would include legislation such as: a) Customs Act 1960; b) Fisheries Act 1966; c) Maritime and Port Authority of Singapore Act 1996; d) Merchant Shipping Act 1995; e) Merchant Shipping (Civil Liability and Compensation for Oil Pollution) Act 1998; f)

[28] There is no definition of the terms "ship" and "vessel" under the UNCLOS, which uses the two terms interchangeably. See https://cil.nus.edu.sg/wp-content/uploads/2022/06/UNCLOS-and-maritime-autonomous-Surface-Ships-2.pdf at p 6

Merchant Shipping (Civil Liability and Compensation for Bunker Oil Pollution) Act 2008; and g) Prevention of Pollution of the Sea Act 1990.

(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?

83. Singapore would adhere to the circumstances recognised in UNCLOS Art. 27 in its exercise of criminal jurisdiction in the manner stated above. The relevant statutes for this purpose would include the Maritime and Port Authority of Singapore Act 1996, the Merchant Shipping Act 1995 and the Penal Code 1871.

84. In particular, Section 180 of the MSA 1995 provides: "*Where any person is charged with having committed any offence on board any Singapore ship on the high seas or elsewhere outside Singapore or on board any foreign ship to which the person does not belong and that person is found within the jurisdiction of any court in Singapore which would have had cognizance of the offence if it had been committed on board a Singapore ship within the limits of its ordinary jurisdiction, that court has jurisdiction to try the offence as if it had been so committed.*"

85. Essentially, Singapore Courts have jurisdiction over any offence committed on board a foreign-registered vessel by a person who "does not belong" to that vessel if the Court would have jurisdiction had the offence been committed on board a Singapore ship. In the recent case of *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516, the Singapore High Court suggested that the words "does not belong" in Section 180 of the MSA 1995 could be construed as referring to persons who were not the crew members of a foreign ship.

(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?

86. Singapore would adhere to the circumstances recognised in UNCLOS Art. 28 in its exercise of civil jurisdiction in the manner stated above.

(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)?

87. Singapore borders the Singapore Strait, a strait used for international navigation as defined under UNCLOS. All vessels enjoy the right of transit passage in the Singapore Strait. Singapore would recognise its right of transit passage through the Singapore Strait if the MORU in question is itself, or in combination with the towing vessel, a ship under the UNCLOS.

88. It should be noted that there is a substantial overlap between Singapore's territorial waters and the Singapore Strait. The Maritime and Port Authority of Singapore Act 1996 that specifies the rules and regulations that are applicable in the territorial waters does not distinguish between the part which forms the Singapore Strait used for international navigation and the part which does not. Accordingly, it is likely that a foreign-registered MORU that is being towed through the Singapore Strait (that is within Singapore's territorial waters) will be subject to the Singapore domestic legislation referred to in paragraph 82 above.

(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)?

89. Singapore is not an archipelagic State within the meaning of UNCLOS Art. 46.

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)?

90. In Singapore, the arrest, repossession or seizure by a creditor of property under lease or contract with an organ of the state may be prohibited if:

(a) in the case of the Singapore government, Section 8(2) of the HCAJA or Section 35(1) of the Government Proceedings Act 1956 ("**GPA 1956**") apply; or

(b) in the case of any foreign or Commonwealth State other than Singapore, the relevant provisions of the State Immunity Act 1979 ("**SIA 1979**") apply.

Singapore Government

91. Generally speaking, the Singapore Courts have no jurisdiction under the HCAJA to arrest a ship which belongs to the Singapore government.

92. Section 8(2) of the HCAJA provides that "*[n]othing in this Act shall authorise proceedings in rem in respect of any claim against the Government, or the arrest, detention or sale of (a) any ship of which the beneficial interest is vested in the Government, or which is for the time being demised or sub-demised to or in the exclusive possession of the Government; (b) any aircraft belonging to the Government; or (c) any cargo or other property belonging to the Government.*"

93. Section 35(1) of the GPA 1956 additionally provides that "*[n]othing in this Act shall authorise proceedings in rem in respect of any claim against the Government, or the arrest, detention or sale of any ship or aircraft, or of any cargo or other property belonging to the Government, or give to any person any lien on such ship, cargo or other property.*"

Any Foreign or Commonwealth State

94. Under Section 3 of the SIA 1979, a State is immune from the jurisdiction of the courts of Singapore except as provided in the provisions of Part 2 of the SIA 1979. The latter includes, *inter alia*, where the State has submitted to the jurisdiction of the courts of Singapore, or the legal proceedings relate to a commercial transaction entered into by the State, or personal injuries and damage to property. Subject to where there is written consent of the State concerned or the property is for the time being in use or intended for use of commercial purposes, the property of a State must also not be subject to "*any process for the enforcement of a judgment or an arbitration award or, in an action in rem, for its arrest, detention or sale*" (Section 15(2)(b) of the SIA 1979).

95. For the purposes of the SIA 1979, "State" refers to any foreign or Commonwealth State other than Singapore; and references to a State include references to (a) the sovereign or other head of that State in his or her public capacity; (b) the government of that State; and (c) any department of that government, but not to any entity which is distinct from the executive organs of the government of the State and capable of suing or being sued.[29]

96. Section 12 of the SIA 1979, which concerns ships used for commercial purposes, contains an exception to the immunity granted to a State under Section 3 of the SIA 1979. In essence, a State is not immune if, at the time when the cause of action arose, the ship was in use or intended for use for commercial purposes. "Commercial purposes" further refers to the purposes of (a) any contract for the supply of goods or services; (b) any loan or other transaction for the provision of finance and any guarantee or indemnity in respect of any such transaction or of any other financial obligation; and (c) any other transaction or activity (whether of a commercial, industrial, financial, professional or other similar character) into which a State enters or in which it engages otherwise than in the exercise of sovereign authority.[30]

(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?

97. As stated at paragraph 94 above, the SIA 1979 provides that the State may provide written consent for its property to be subject to "*any process for the enforcement of a judgment or an arbitration award or, in an action in rem, for its arrest, detention or sale*"; thus, such waiver would be possible. The State may additionally submit to the jurisdiction of the court of Singapore: as provided in Section 4(1) of the SIA 1979, "*a State is not immune as respects proceedings in respect of which it has submitted to the jurisdiction of the courts of Singapore*."

[29] https://sso.agc.gov.sg/Act-Rev/SIA1979/Published?DocDate=20141231&ProvIds=P13-#pr16-
[30] https://sso.agc.gov.sg/Act/SIA1979?ProvIds=P12-#pr5-