Response of South Korean NMLA

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.

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.

- Because the Framework Act on Maritime Safety distinguishes between a "marine facility" and a "vessel," MORU under this law will be categorized as a "marine facility."

Framework Act on Maritime Safety
Article 3 (Definitions)
The terms used in this Act are defined as follows:
2. The term "vessel" means any kind of vessel used or usable as a means of navigation on the water, including a seaplane (referring to an aircraft capable of moving on the water) and a wing-in-ground craft (referring to a craft which flies in close proximity to the surface by utilizing surface-effect action).
3. The term "marine facility" means a bridge, tunnel, cable, artificial island, or facility fixed to the ocean floor or a structure floating on the water (excluding a vessel) for the purpose of exploration and development of resources, scientific marine surveys, mooring and repair of vessels, cargo operations, floating housing, tourism, leisure, etc.

■ On the other hand, while Article 26 of the Ship Act states that the provisions in the Ship Act regarding registration does not apply to "[b]arges weighing at least 20 gross tons which are fixed underwater for the purpose of mooring ships or storing ship supplies," this exception does not include "floating structure-type barges, such as floating hotels, floating restaurants, and floating theaters which obtained permission for occupation and use or permission for use under Article 8 of the Public Waters Management and Reclamation Act or which obtained permission for occupation and use under Article 33 of the River Act" – i.e., floating structure-type barges are defined as ships. These provisions of the Ship Act appear to be in conflict with the Framework Act on Maritime Safety. However, the classification made under the Framework Act on Maritime Safety probably takes precedence over the classification made in the Ship Act, given that the relevant provisions in the Ship Act appears to be referring to cases in which ships composed of barges initially built for sailing are later re-purposed, and the question is referring to structures that are made for wind power facilities. The Ship under the Ship Act are subject to the vessel registration as well as flying the flag of Republic of Korea.

■ However, the Korea Supreme Court in one case took an expansive view of the types of vessels that are subject to registration, including barges used for purposes listed in the question above. Supreme Court Decision 2018Da273608 rendered on September 3, 2020 (discussing barges used for water leisure activities). Consequently, for wind power facilities that require a Public Waters Occupational Permit, the possibility that a MORU may be categorized as a "vessel," based on the specifics of its production processes, the development progress of other MORUs and/or floating wind power facilities, cannot be entirely ruled out.

Ship Act
Article 26 (Ship Partially Excluded from Application)
Articles 7, 8, 8-2, 8-3, 9 through 11, 13, 18, and 22 shall not apply to any of the following ships: Provided, That Articles 8, 18, and 22 shall not apply to ships falling under subparagraph 6:
1. Warships and police ships;
2. Sail ships with no engine installed among those weighing less than 5 gross tons;
3. Barges weighing less than 20 gross tons;
4. Barges weighing at least 20 gross tons which are fixed underwater for the purpose of mooring ships or storing ship supplies, etc.: Provided, That floating structure-type barges, such as floating hotels, floating restaurants, and floating theaters which obtained permission for occupation and use or permission for use under Article 8 of the Public Waters Management and Reclamation Act or which obtained permission for occupation and use under Article 33 of the River Act shall be excluded herefrom;
5. Ships navigated by only oars and row poles;
6. Fishing vessels falling under each item of subparagraph 1 of Article 2 of the Fishing Vessels Act;
7. Dredgers registered as construction machinery under Article 3 of the Construction Machinery Management Act;
8. Water motorcycles, motorboats, rubber boats, and yachts registered as water leisure equipment under Article 30 of the Water-Related Leisure Activities Safety Act from among power-driven water leisure equipment under subparagraph 4 of Article 2 of the aforesaid Act.

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)?

- As explained above, because a MORU will be categorized as a "marine facility" which is separate from a "vessel" or a "ship," equipping a MORU with an integrated dynamic positioning or other station-keeping systems will not mean that it will be categorized as a "vessel" or a "ship."

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

- There are no relevant procedures for recording ownership interest of marine facilities, besides the procedure for filing a report to the Minister of Oceans and Fisheries, the city mayor, or the province governor under Article 33 of the Marine Environment Management Act. However, the purpose of this report is to prevent marine pollution, and not to record ownership interests.

Marine Environment Management Act
Article 33 (Reporting on Marine Facilities)
(1) The owner of a marine facility (including installers and operators, and where such facilities are leased, referring to the lessees of such facilities; hereinafter the same shall apply) shall report the facility to the Minister of Oceans and Fisheries, the city mayor, or the province governor, under the following clauses. If there are changes in important contents, as defined in Ministerial Decree of Oceans and Fisheries, reports on modifications must be filed.
1. Under Article 2 of the Act on the Exclusive Economic Zone and Continental Shelf, exclusive economic zones; Under Article 3 Section 2 Subsection 1, and Section 3 Subsection 1, marine facilities of national trade ports and national coastal ports: Minister of Oceans and Fisheries.
2. Other marine facilities in oceans other than those in Subsection 1: The city mayor or the province governor.
(2) The content of the reports of marine facilities to be reported under paragraph (1), the important contents for which reports on modifications must be filed, and procedures for reporting marine facilities, and other necessary matters are to be determined by Ministerial Decree of Oceans and Fisheries.

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.

■ Please see above.

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

■ Please see above.

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.

■ Please see above.

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.

- Because there are no procedures to publicly record an ownership interest in MORUs, there are no procedures to separately record leases, subleases, or charters. Please note that, while there are procedures to publicly record an ownership interest through registration for ships subject to Korean law, there are no separate procedures to record leases, subleases, or charters.

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?

- None. Please see above.

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.

- Because there are no procedures to publicly record an ownership interest in MORUs, there are no procedures to separately record liens, maritime liens, claims, encumbrances (e.g. mortgages or hypotheques), and other similar claims. Please note that, for ships subject to Korean law, information regarding liens are recorded in the registry.

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

- None.

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?

- None. Please see above.

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?

- It should be noted that under Article 94 of the Korean Conflict of Law Act, the ownership of the vessel, the security created on the vessel including the maritime lien shall be governed by the law of the country of the flag of the vessel. However, as explained above, a MORU will be categorized as a ship, not a marine facility, and will not be treated as a "vessel" or a "ship" for other purposes than those explained above.

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?

- Courts will not decline to enforce an asserted claim, but enforce the claim as they would enforce a claim for a movable property. Enforcement against the movable under Korean law included deprivation of the possession of the subject matter in case of the attachment and public sale which shall result in the distribution of the proceeds to the creditors.

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?

- While there appears to be a general trend to accord the same priority for enforcement in case of the enforcement against the foreign vessels, this does not apply to MORUs.

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?

- Korea is not a 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. Thus, it's not possible that Korea will recognize MORU as a "vessel" or "sea-going vessel."

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?

- The provisions in the Korean Civil Code regarding movable property will apply to a sale or a change of ownership of a MORU, which means that the possession by the buyer shall complete the transfer of the ownership in case of the movable property

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

a. Foreign-owned but not registered, or

b. operated in the territorial sea of your jurisdiction?

- The answer will not vary.

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: MORUs (of any type);

a. MORUs (of any type);

- None.

b. Offshore wind turbines (fixed or floating);

- None.

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

- While there were no specific reported decisions on this topic.

d. FSUs and FPSOs

- While there were no specific reported decisions on this topic.

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)?

- It would not be possible to arrest a MORU because it will not be recognized as a vessel. Moreover, Korea does not recognize *in rem* actions. However, it will be possible to attach, i.e. deprive the possession of, a MORU using the procedures governing general movable property.

a. If so, on what grounds?

- N/A.

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

- N/A.

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

- It is possible – See the answer to the first question 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? If so, please provide authority.

- In the general case in which a movable property is seized, it is possible to release the movable property after the debtor provides collateral, usually the deposit of the cash equivalent to the claim amount by the creditor.

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?")?

- Because the limitation of liability for vessels under Korea law only applies to vessels, a owner or a salvor will not be able to argue for a limitation of liability.

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?

- As explained above in the answer to the first question, limitation of liability will not apply.

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.

- None.

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))?

- The right of innocent passage under UN conventions will be recognized regardless of whether a MORU is categorized as a vessel.

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 right of innocent passage under UN conventions will be recognized regardless of whether a MORU is categorized as a vessel.

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?

- There are no separate provisions on this topic.

a. 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?

- There are no separate provisions on this topic.

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)?

- This question does not appear to be relevant for Korea.

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))?

- This question does not appear to be relevant for Korea.

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)?

- Korean court admit the sovereign immunity on a very limited basis. Supreme Court Decision 2009Da16766 rendered December 13, 2011 confirmed that in relation to the private act of the foreign government occurred within the Korean territory, the Korean court has jurisdiction over the foreign government. Nonetheless, the Korean court shall not have the jurisdiction in case such private act of the foreign government is considered to be and/or related to the sovereign act of the foreign country, therefore the exercise of the jurisdiction by the Korean court can be considered as improper intervention over the sovereign act of the foreign government.

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?

- It is generally understood that the foreign government can waive its right of the sovereign immunity.