



**COUNTRY  
COMPARATIVE  
GUIDES 2023**

# **The Legal 500 Country Comparative Guides**

## **Hot Topic | Shipping**

# **The Cabotage Rule Under Korean Law: Focused On The Potential Use Of Foreign-Flagged Ships In The Installation Of Offshore Wind Farms**

### **Contributor**

**CHOI & KIM**

#### **J. H. Choi**

Partner | [jhchoi@choikim.com](mailto:jhchoi@choikim.com)

#### **J. H. Shin**

Partner | [jhshin@choikim.com](mailto:jhshin@choikim.com)

**Law Offices  
CHOI & KIM**

For a full list of jurisdictional Q&As & hot topic articles visit [legal500.com/guides/](https://legal500.com/guides/)

# **THE CABOTAGE RULE UNDER KOREAN LAW**

## **FOCUSED ON THE POTENTIAL USE OF FOREIGN-FLAGGED SHIPS IN THE INSTALLATION OF OFFSHORE WIND FARMS**

---



### **I. Recent developments in offshore wind farms in Korea**

In 2017, the Korean government announced the “Renewable Energy 3020 Action Plan” (the “Plan”). As of 2016, renewable energy comprised only 7% of the total electric energy produced in Korea, and hence the Plan is intended to increase the proportion of renewable energy to 20% by constructing additional solar and wind farms. Under this proposal, a wind farm of 17.7GW must be installed by 2030 and, of this, 12GW would be produced via offshore wind farms.

In the two years following the announcement of the Plan, the new facilities installed for renewable energy generation exceeded the government’s targets. However, this overachievement was primarily due to a significant increase in the solar power installations, while offshore wind power installations fell short of its targets. As of 2020, commercially-operating offshore wind power generation amounted to only about 142MW (9 sites with 51 turbines). In response to this underperformance in offshore wind power installations, the government presented a specialized plan for offshore wind power generation in July 2020 (the “Addendum to the Plan”). According to the Addendum to the Plan, by 2030 a 12GW-offshore wind farm would be built that would allow Korea to emerge as one of the top five offshore wind power generation countries in the world. To achieve this goal, the government is preparing a detailed legislation, including streamlining permits and licenses for the installation of offshore wind power facilities.

With the government’s active support measures to expand offshore wind power facilities, global wind power generation companies are forming consortia with Korean companies to pursue large-scale offshore wind power generation projects. Currently, construction of offshore wind farms is underway in various locations, including Sinan (8.2GW), the Southwest region of North Jeolla (2.4GW), Ulsan, (6.0GW), Incheon, and Jeju. Thus, the construction of offshore wind farms in Korea is expected to expand rapidly.

### **II. Need for charters of non-Korean WTIVs**

There are two types of offshore wind farms: fixed and floating. Floating offshore wind farms take the form of fixing a turbine on a structure which is afloat like a ship. Currently, a 9.6GW floating offshore wind farm is under construction in the East Sea, about 70-80km off the coast of Ulsan. Meanwhile, construction of fixed offshore wind farms is being pursued in places like South Jeolla and Jeju. Fixed offshore wind turbines are fixed underwater and typically use monopile or jacket foundations. Larger sizes of monopiles and jackets are increasing in demand in response to the increases in the size of the offshore wind turbines.

In order to transport these enormous foundational structures from a port to the offshore construction sites and install them, a specialized vessel known as Wind Turbine Installation Vessel (“WTIV”) is used. It is known that WTIVs are employed to transport and install fixed wind turbines of 10MW capacity or more.

As of August 2021, it was found that a total of 18 WTIVs were in operation worldwide. In Korea, after about six years of development efforts, the first Korean WTIV “Hyundai Frontier” commenced its journey in June 2023 and is currently in full operation at the installation site of Hanlim offshore wind farm. However, as the government’s offshore wind power generation plan progresses and multiple offshore wind farms are constructed, it is anticipated that, in addition to the Hyundai Frontier, foreign-flagged WTIVs will need to be deployed.

However, Korea adopted the cabotage rule, which principally prohibits foreign-flagged vessels from transporting cargo within Korea, with exceptions allowed only in certain cases. To determine the feasibility of chartering foreign-flagged WTIVs, it is necessary to examine whether the Korean cabotage rule would apply to such chartering and, if so, the prerequisite conditions for the lawful chartering. Below we discuss the cabotage rule in Korea and address the legal requirements in chartering foreign-flagged WTIVs for the carriage and installation of offshore wind farms.

### **III. Application of and exceptions to the cabotage rule in Korea**

Under Korean law, the transportation of cargo between domestic ports by non-Korean vessels is prohibited, with exceptions allowed either by a statutory provision or with the permission of the Minister of Oceans and Fisheries. Below we examine in turn the cabotage rule under Korean law and the exceptions to this rule.

#### **1. Cabotage rule under Korean law**

Korean law prohibits non-Korean vessels from transporting cargo between domestic ports (Article 6 of the Shipping Act). The purpose of the cabotage rule in Korea is to protect the domestic shipping industry and to prepare for national emergencies, such as the transportation of fuel and essential goods. A “Korean vessel” is defined as (i) a ship owned by the state or a public entity, (ii) a ship owned by a Korean citizen, (iii) a ship owned by a corporation established under Korean law, or (iv) a ship owned by a corporation not established under Korean law but having its principal office in Korea and whose representative is a Korean citizen (Article 2 of the Shipping Act).

Therefore, vessels that do not fall within these four categories (hereinafter referred to as “foreign-flagged vessels”) are prohibited from transporting cargo between domestic ports in Korea. If a foreign-flagged vessel violates the cabotage rule by transporting cargo within Korea, the master of the vessel faces severe criminal punishment, including an imprisonment for up to five years or a fine of up to 50 million Won (Article 33 of the Shipping Act).

#### **2. Exceptions to the cabotage rule under Korean law**

Under Korean law, there are specific cases where foreign-flagged vessels are permitted to transport goods between domestic ports. The rationale behind these exceptions to the cabotage rule is to strike a balance between protecting Korean vessels and upholding the principle of freedom of navigation under international law. These exceptions are centered around the Maritime Transport Act.

Under Korean law, marine cargo transportation services, including ancillary services, are classified into three types based on the area and method of transport (Maritime Transport Act, Article 23):

1. Coastal cargo transportation services: marine cargo transportation services operated between domestic ports;
2. Liner services: marine cargo transportation services, with vessels operating along fixed routes between domestic and foreign ports, or between foreign ports, pursuant to a specified schedule; and
3. Tramp services: marine cargo transportation services, other than those under subparagraphs i and ii.

Any person who intends to operate a business in marine cargo transportation services must register his business with the Ministry of Oceans and Fisheries (MOF) as one of the three categories (Article 24 of the Maritime Transport Act). If such person operates his marine cargo transportation business without registering with the MOF or operates a business different from that which is registered with the MOF (e.g., if a person operates coastal cargo transportation service business even though his license is for business in liner services), then he may be punished by a fine not exceeding 20 million Won (Article 56).

The Maritime Transport Act specifies the conditions under which service providers of each of these three types of marine cargo transportation businesses are allowed to use foreign-flagged vessels for transporting cargo between domestic ports. These provisions are recognized as exceptions to the cabotage rule and examined below in detail.

#### **A. Coastal cargo transportation services**

A business operator providing coastal cargo transportation services is allowed to transport cargo between domestic ports by using Korean vessels, but such operator is, in principle, prohibited from chartering foreign-flagged vessels to transport cargo between domestic ports (Maritime Transport Act, Article 49, Paragraph 1). Thus, coastal cargo transport operators are also subject to the cabotage rule.

That said, under the following three circumstances, coastal cargo transportation service operators are permitted to charter foreign-flagged vessels for transporting cargo between domestic ports: (i) chartering of foreign-flagged vessels under a bareboat charter hire with purchase option ("BBCHP"), (ii) chartering of foreign-flagged crude oil tankers, and (iii) permission is obtained from the director of Regional Office of Oceans and Fisheries.

With respect to exception (iii), such permission may be granted if the following requirements are satisfied: (a) the coastal cargo transportation service operator files the application for chartering a foreign-flagged ship at least 20 days prior to the actual hiring of the vessel, and (b) if it is determined that there is no suitable Korean-flagged vessel for the intended domestic transportation, then the chartering of a foreign-flagged ship may be approved after passing the deliberation of the commission on the suitability of chartering the foreign-flagged ship;

#### **B. Overseas cargo transportation services**

In contrast to a coastal cargo transportation services business, a business engaged in overseas cargo transportation services is permitted to charter foreign-flagged vessels. However, transporting cargo

between domestic ports is principally prohibited, with exceptions only in specific cases as follows:

### ***Liner services***

A business operator engaged in liner services may transport the following types of cargo without registering as a coastal cargo transportation services operator: (i) empty containers or container-packed cargo for export or import (excluding container-packed cargo traded among local Koreans) transported between domestic ports; or (ii) container-packed cargo transported for transshipment between domestic ports within the same boundaries of a water zone (Article 25(2) of the Maritime Transport Act).

### ***Tramp services***

A business engaged in tramp transportation services may substitute the required registration (for coastal cargo transportation operators) by submitting an advanced report to the MOF in order to temporarily transport cargo between domestic ports (Article 25(2) of the Maritime Transport Act). However, this exception is allowed only with respect to the chartering of a Korean-flagged ship or of foreign-flagged vessels under BBCHP, and hence this exception would be inapplicable for foreign-flagged vessels chartered on time or voyage charters.

## **IV. Considerations for using foreign-flagged WTIVs for transporting and installing equipment in offshore wind farm projects**

### **1. Whether the cabotage rule applies**

As discussed earlier, foreign-flagged vessels are prohibited under Korean law from transporting cargo “between domestic ports”. However, offshore wind farms are constructed at a considerable distance from the ports, and vessels deployed in the construction typically transport the necessary equipment or materials from a domestic port to the offshore wind farm site, not to another domestic port. Therefore, it raises the question of whether the transportation of equipment/materials by foreign-flagged vessels from a domestic port to an offshore wind farm falls under the “transportation between domestic ports” as stipulated by the cabotage rule.

In addressing this issue, the key point is whether offshore structures, such as offshore wind farms, can be considered as “domestic ports”. The Shipping Act, which includes the cabotage rule, does not provide a definition of a “domestic port”. However, the Maritime Transport Act provides that a domestic port includes any place at sea where ships can regularly load and unload goods {Article 3 (1)}. Court precedents and scholarly interpretations on this point could not be found. However, because the Maritime Transport Act extends the geographic scope of “domestic ports” to include offshore locations, i.e., beyond the port boundaries, it would be difficult to view that offshore wind farms do not qualify as “domestic ports” simply because they are situated away from the traditional harbors. In light of the ambiguity, there may be a dispute over whether offshore wind farms can be considered as a place where goods are regularly loaded and unloaded. Thus, it would be advisable for those intending to use foreign-flagged WTIVs for the transport of goods to offshore sites to assume in the first instance that the cabotage rule would be applicable.

### **2. Applicability of exceptions to the cabotage rule**

As previously discussed under section III, paragraph (2) above, exceptions to the Korean cabotage rule are only recognized for coastal or overseas marine cargo transportation business operators who meet the requirements under the Maritime Transport Act. Therefore, in order for developers or contractors to use foreign-flagged WTIVs for transporting wind power equipment, they would need to either register as marine cargo transport business operators and charter WTIVs in a manner that meets the exception criteria of the cabotage rule, or contract with maritime cargo transport operators who have chartered foreign-flagged WTIVs in compliance with the cabotage rule exceptions. These approaches are discussed in detail below.

(1) Option 1

Developers or contractors can utilize foreign-flagged WTIVs if they register as coastal cargo transport operators and satisfy the conditions for an exception to the cabotage rule. Specifically, they can either use a foreign-flagged WTIV under a bareboat charter hire with purchase option or obtain permission from the Regional Oceans and Fisheries Office to charter a foreign-flagged vessel.

Under this avenue, the advantage for developers or contractors is the ability to directly enter into a charterparty with foreign shipping companies which own or operate WTIVs, thereby allowing the developers or contractors to deploy WTIVs to the construction site. However, a notable downside is the requirement for the developers or contractors to register as coastal cargo transportation service operators.

(2) Option 2

If a coastal cargo transportation service operator charters a foreign-flagged WTIV under BBCHP or with the permission of the Regional Oceans and Fisheries Office, the foreign-flagged vessel may be deployed for coastal cargo transport. Therefore, developers or contractors are able to use a foreign-flagged WTIV by entering into a contract of carriage with a coastal cargo transport service operator who has chartered the vessel in this manner.

However, this approach has a downside for developers or contractors as they cannot directly enter into an agreement with the foreign shipping companies which own or operate WTIVs. Instead, they must involve a coastal cargo transport service operator as an intermediary to conclude the transport contract.

(3) Option 3

A developer may enter into a contract of carriage with a business in overseas cargo transportation services which has chartered a foreign-flagged WTIVs for temporary use. However, this method is permissible only if the tramp services provider charters the WTIVs under BBCHP.

## **Conclusion**

In line with the Korean government's plan to construct by 2030 offshore wind farms totaling 12GW, the construction of these wind farms is expected to accelerate. Thus, it is expected that Hyundai Frontier, the Korean-flagged WTIV, will be unable to cover all work sites, thereby increasing the likely need of deploying foreign-flagged WTIVs. However, because Korea adheres to the cabotage rule, those who intend to employ foreign-flagged WTIVs for the construction of offshore wind farms should be mindful of

ensuring that their method of deployment satisfies an exception to the cabotage rule.

---

## **Contributors**

**J. H. Choi**  
**Partner**

[jhchoi@choikim.com](mailto:jhchoi@choikim.com)



**J. H. Shin**  
**Partner**

[jhshin@choikim.com](mailto:jhshin@choikim.com)

