Security and enforcement of marina operators’ claims under Croatian law - *de lege ferenda* proposals

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PRESENTATION PLAN

• Point out to **drawbacks in the current law** (the Maritime Code; the „MC”) relating to several aspects of **securing and enforcing** various claims by marina operators towards marina users

• Outline the **legislative proposals** to address those drawbacks in the recent legislative **bill to amend** the MC
PRESENT SITUATION

Various claims by marina operators towards marina users - no adequate security and enforceability

- Not secured by a maritime lien
- Uncertainties in relation to right of retention (possessory lien)
- Regime of judicial sales set out in the MC - not applicable to boats (but only to ships and yachts)
- Uncertainties in relation to arrest
- Limited powers in relation to dealing with derelict vessels
Maritime liens pertain to (inter alia):

„Claims for *port charges*, expenses pertaining to navigation in channels and other sea lanes, and *pilotage costs*“ (Art. 241, para 1, sub-para. 4 MC)

Croatian courts take the (erroneous) view that the term „*port charges*“ includes only charges in the *ports open to public transport* but *not charges in the special-purpose ports*
Maritime liens shall pertain to (inter alia):

„Claims for port charges and dues charged in the ports open to public traffic and special-purpose ports, expenses pertaining to navigation in channels and other sea lanes (…)"

**BUT:** Scope of application - Only to vessels (ships, yachts, boats) of the Croatian flag
PRESENT SITUATION

MC: Right of retention enjoyed by shipbuilders and shiprepairers holding the vessel in the shipyard or shiprepairyard (Article 437)

PROBLEMS:

• Marinas ≠ shipyards ≠ shiprepairyards

• Only some of marina services qualify as „repairs”. Berthing, and even maintenance works, do not qualify as such.
LEGISLATIVE PROPOSALS                    RIGHT OF RETENTION

• Shiprepair and ship-conversion contract – applicable provisions expressly extended to apply to yachts as well as boats.

• Definition of shiprepair or ship-conversion contract expressly extended to maintenance, servicing and the like.

• Nautical berth contract – express right of retention to the berth provider (including the right to relocate the vessel) as security for all the claims arising in connection with the berth contract or with the stay of the vessel on the berth following termination of the berth contract.
PRESENT SITUATION      JUDICIAL SALES OF VESSELS

- Provisions of MC dealing with judicial sales of vessels apply to ships and yachts, **BUT not to boats.**

- BOATS thus left to be judicially sold according to the **general rules of judicial sales** (Forced Execution Act), containing somewhat **different procedure** and **different order of priority.**

- sometimes by the **courts of general jurisdiction** (Municipal Courts).

- **TRICKY,** because provisions of the MC on **ship mortgages** and **maritime liens** expressly **apply to boats.**
Provisions of MC dealing with judicial sales of vessels expressly extended to boats.
• Provisions of MC dealing with arrest of vessels apply to ships and yachts, **BUT not to boats** (different rules + different jurisdiction).

• List of „**maritime claims**“ does not contain claims arising in connection with **port/berth dues/charges**

• List of „**maritime claims**“ does not contain claims arising in connection with **watching and/or maintenance and/or berthing** the vessels
LEGISLATIVE PROPOSAL  ARREST OF VESSELS

• Provisions of MC dealing with arrest of vessels extended to apply to boats.

• List of „maritime claims” extended to expressly include claims arising in connection with port/berth dues/charges (in line with 1999 Arrest Convention).

• List of „maritime claims” extended to expressly include claims arising in connection with watching and/or maintenance and/or berthing the vessels.
• Provisions of MC dealing with the right to dispose with derelict vessels (logically) apply to vessels at sea.

• Marinas sometimes face problems with derelict vessels at dry berth: without a known owner, little can be done
Provisions of MC dealing with wreck removal expressly extended to apply to wrecks on shore.
LEGISLATIVE PROPOSALS

SUMMARY

- Will increase the **level of security** as to various claims by marina operators *(maritime lien / retention / arrest)*

- Will **facilitate enforcement** of those claims *(MC + Commercial Courts)*

- Will improve the **order of priority** enjoyed by those claims in case of judicial sale *(maritime lien / retention)*

- Will provide operators with **more efficient out-of-court tools** to deal with those claims *(retention / wreck removal)*
Thank you for your attention.