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THE LEGAL REGIME OF NAUTICAL TOURISM PORTS  
IN CROATIA  
*DE LEGE LATA ET DE LEGE FERENDA*

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[www.delicromar.hazu.hr](http://www.delicromar.hazu.hr)

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## Legal sources

- Constitution of the Republic of Croatia
- Act on Ownership and other Property Rights
- Land Register Act
- Maritime Domain and Seaports Act
  - Regulation on Classification of the Seaports Open for Public Traffic and Special Purpose Ports
- Act on the Providing of Tourism Services
  - Ordinance on Classification and Categorisation of the Nautical Tourism Ports
- Maritime Code

## Constitution of the Republic of Croatia, Art. 52

The sea, seashore, islands, waters, air space, mineral resources, and other natural assets, as well as land, forests, flora and fauna, other components of the natural environment, real estate and items of particular cultural, historical, economic or ecological significance which are specified by law to be of interest to the Republic of Croatia shall enjoy its special protection.

✗ special legal regime

The manner in which any assets of interest to the Republic of Croatia may be used and exploited by holders of rights thereto and by their owners, as well as compensation for any restrictions as may be imposed thereon, shall be regulated by law.

## Act on Ownership and other Property Rights, Art. 3

Those parts of nature which in view of their characteristics cannot be in the control of any natural person or legal entity individually, but are used by all, such as the air and **water in rivers, lakes and the sea, as well as the seashore** (common goods), **do not have the capacity of being the subject matter of the right of ownership and other property rights.**

 *res extra commercium*

The Republic of Croatia takes care, administers and is responsible for common goods, unless a particular piece of legislation provides otherwise.

# Maritime Domain and Seaports Act, Art. 3

Maritime domain includes internal sea waters and territorial sea, their seabed and subsoil, and a part of land that is by its nature intended for general use or has been proclaimed as such as well as anything that is permanently attached to such part of a land on the surface or underneath it.



...coast, PORTS, embankments, sandbanks...



Port is a seaport i.e. marine space and land area directly connected to the sea, together with constructed and non constructed quays, breakwaters, equipment plants and other objects intended for mooring, anchoring and protection of ships, yachts and boats, embarkation and disembarkation of passengers and goods, warehousing and other goods handling, production, refinement and processing of goods as well as other economic activities related to such activities in business, transport or technological terms.



**whole port area**

# Legal status of maritime domain

**Maritime domain** is a **common good of interest for the Republic of Croatia**; it is under its special protection and is used under the conditions and in the way regulated by this Act. (Art. 3/1 MDSPA)

Right of ownership or any other property right can not be acquired on maritime domain on any basis.



*res extra commercium*

- economic exploitation may be performed only on the basis of granted concession

A single real estate consists of the land plot,  
including everything permanently affixed at its surface or underneath it.

*Superficies solo cedit!*

**Act on Ownership  
and other Property Rights, Art. 9/4**

Buildings and other structures permanently connected to the land ... **are not part of the real estate IF ... legally separated from the land or a common good by a concession** based on law authorising its holder to own such a building or another structure thereon.

*Superficies solo cedit* is only a rebuttable presumption (*praesumptio iuris*)!

**Maritime Domain and Seaports Act, Art. 5**

Buildings and other structures on maritime domain which are permanently connected with the maritime domain **shall be considered** as belonging to the maritime domain.  
Right of ownership or any other property right **can not be acquired on maritime domain** on any basis.

*Presumptio iuris* or *presumptio iuris et de iure*?



# Are there any specifics regarding nautical tourism port regime? Classification of the ports, Art. 40-43 MDSPA

## 1. Ports open for public traffic

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- 
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IMPORTANT!

Can have nautical berths for nautical vessels!

## 2. Special purpose ports

### 2.1. by the activities

- military ports
- nautical tourism ports
- industrial ports
- shipyard ports
- sport, fishing and other similar ports

### 2.2. open for:

- international traffic
- domestic traffic

### 2.3. by their importance:

- of importance for the Republic of Croatia
- of county importance

Economic exploitation of port may be performed only on the basis of granted concession

### Requirements for concession granting

- ...
- concession can be granted only after the boundaries of maritime domain have been determined and entered into land register
- concession shall be granted on the basis of a public tender (same procedure for existing ports and new ports)
- ...

# Outstanding issues of nautical ports built before 1991:

## Before 1991:

- legal separation of buildings and socially-owned land parcel achieved by the establishment of different para-real rights on the buildings – so called 'right to use'
- maritime domain was *res extra commercium*, 'socially owned in common use'
  - users of maritime domain had 'right to use' BUT, was that the same right??
  - buildings were kept in records of assets
  - investments in constructions and maintenance done in accordance with the physical plans and based on the valid building permits

# Outstanding issues of nautical ports built before 1991:

After 1991 – long process of transformation

- A) social ownership turned into the civil ownership - the right to use the building turned into the right of ownership on the building, and the owner of the building became the owner of the land parcel
- B) socially-owned enterprises turned into trading companies with determined owner (joint stock company or limited liability company)

## Process of transformation in ports of nautical tourism

- the value of the social capital was estimated and entered into the company's share capital (uneven practice – value of buildings and structures, sometimes maritime domain (land) and structures, sometimes investments)
- in some ports registration of ownership on the maritime domain was carried out in land registers

→ PRIVATISATION company's shares were sold

# Outstanding issues of nautical ports build before 1991:

- What is actually share capital in those companies?
- What is going to happened after the termination of concession contract?
  - value of buildings, maritime domain and investments entered into share capital will have to be erased from the records of assets
    - will it be matter of disputes?
    - will that block the consecutive process of concession granting?
  - share capital will have to be reduced
  - value of stocks and shares will fall
  - liquidation?

# Outstanding issues of nautical ports build before 1994:

- from March 22nd 1994 to October 26th 1994 ports were not included into maritime domain!
  - were they under general ownership regime?
    - in some ports registration of ownership on the maritime domain was carried out
  - should they be expropriated?
  - how to determine the just compensation?

## Outstanding issues of existing nautical ports:

- ✗ valorisation of legitimate investments after the termination of concession
  - superstructure and infrastructure built on the maritime domain becomes (remains) a part of maritime domain without right to compensation for the increased value of the maritime domain nor to the priority concession
  - established business, brand

In the new concession granting procedure old concessionaire is in the same position as all potential concessionaires.

# Outstanding issues of existing nautical ports:

Building licence may be obtained only if there is a single building plot!

- number of privately owned land parcels in the existing nautical ports
  - many of them subject do disputes
  - waiting State Attorneys to carry out the processes in order to erase those rights from land registers or to expropriate the owners
- boundaries are determined but land parcels are not entered into land registers

Impossibility of carrying out any construction or reconstruction investments!



## De lege ferenda

- provide a comprehensive and accurate regulatory framework
  - screening of all the problems in the matter of nautical tourism ports
- allow legal separation of buildings from maritime domain
- introduce the procedures for the renewal of the concession or right to compensation for the increased value of the maritime domain or to the priority concession
- resolve open issues of acquired ownership – carry out expropriation
- make every effort in putting in order land registers regarding ports of nautical tourism
- regulate and carry out in practice the efficient supervision

THANK YOU FOR YOUR ATTENTION!