
NATIONAL REPORT

A REVIEW OF CONTRACTUAL PRACTICES BETWEEN MARINA OPERATORS AND YACHT CHARTERING COMPANIES IN CROATIA

Marija Pijaca*

Adriana Vincenca Padovan**

This article provides a brief review of the business cooperation agreements and berth contracts commonly used between Croatian marina operators and yacht chartering companies. Considering the strategic importance of nautical tourism in Croatia and the fact that the marina business and yacht chartering constitute vital parts of the nautical tourism industry, legal certainty surrounding the respective relationships is of utmost importance and a condition for further sustainable development of this branch of economy. The aim of the article is to give a critical insight into the contractual practices that have developed over the past 20 years between marina operators and yacht chartering companies during a time of rapid growth in nautical tourism in Croatia.

Introduction

In Croatia there are 140 nautical tourism ports, including 70 marinas (of which 13 are land marinas) and 70 other nautical tourism ports (anchorages, mooring areas and uncategorised nautical tourism ports). The total number of berths in those ports in 2017 was 17,067. There were 13,000 vessels permanently moored in nautical ports and 202,000 vessels in transit. The total income realised in nautical ports in 2017 amounted to about €115 million, of which around 70 per cent was realised by renting out berths.¹

There are approximately 645 active yacht chartering companies in Croatia, although the number of companies formally registered for performing vessel chartering activities is much higher, amounting to 1,906. There are around 3,305 vessels registered for chartering. According to the data published by the Ministry of Tourism, Croatia is the leading charter destination in the world by the number of bookings and the number of charter vessels. The data refers only to bareboat chartering of pleasure craft and it shows that, in 2013, Croatia held 33 per cent of all charter bookings and 25 per cent of the charter fleet worldwide.² The current assessment is that these ratios have further increased and that nowadays Croatia holds almost 40 per cent of the world's pleasure craft charter fleet.³

Under Croatian law, a marina is a type of special purpose port dedicated exclusively to nautical tourism,⁴ which is primarily for the provision of berths and other accompanying services to yachts and other pleasure craft, their owners, users and crews. The main piece of legislation regulating seaports in Croatia is the Maritime Domain and Seaports Act (MDSPA).⁵ The implementation of this

* Assistant Professor, Maritime Department, University of Zadar, Croatia; mpijaca@unizd.hr.

** Research associate, Adriatic Institute, Croatian Academy of Sciences and Arts, Zagreb, Croatia; avpadovan@hazu.hr.

¹ Croatian Bureau of Statistics 'Nautical tourism: capacity and turnover of ports 2017' First Release No 4.3.4 (27 March 2018).

² <https://mint.gov.hr/vijesti/hrvatska-domacin-najvecem-susretu-charter-industrije-u-svijetu/charter-djelatnost/8893>.

³ <http://vijesti.hrt.hr/441478/hrvatska-carter-flota-drzi-40-posto-svjetske-flote-plovila-za-najam>.

⁴ Regulation on the Classification of the Seaports Open to Public Traffic and of the Special Purpose Ports, *Official Gazette* No 110/04.

⁵ *Official Gazette* Nos 158/03, 100/04, 141/06, 38/09, 123/11, 56/16.

act is in the competence of the Ministry of the Sea, Transport and Infrastructure. In addition, the classification and categorisation of nautical tourism ports is regulated by the Ordinance on Classification and Categorisation of Nautical Tourism Ports⁶ (OCCNTP), which is a sub-law promulgated by the Ministry of Tourism based on the Tourism Services Act of 2007.⁷ Marinas are the most complex form of nautical tourism port⁸ and, according to the OCCNTP, are defined parts of water space and of the shore specially constructed and arranged for the provision of moorings, the accommodation of tourists on vessels and other services in nautical tourism (Article 10 of the OCCNTP). Other types of nautical tourism ports include anchorages, mooring areas, boat storages and land marinas. Marinas offer the highest level of quality service in nautical tourism and are commercially the most important ports of nautical tourism.⁹

It should be noted that, according to the MDSPA, all Croatian seaports, including marinas, are subject to the legal regime of a public maritime domain applying both to their water and to their land areas. Therefore the construction and operation of a marina is possible based exclusively on a concession granted by the competent public authority. Each marina is run by a single marina operator as a concessionaire, in practice usually a commercial company.

Unlike marinas and other nautical tourism ports, Croatian seaports open to public traffic are regulated on a landlord model and operated by the port authorities as public law entities. The public ports frequently offer berthing services for pleasure craft and, in fact, their berthing capacities in the areas designated for pleasure craft are constantly increasing. However, under the current legal regime they are not allowed to provide long-term berths for charter fleets. In the ports open to public traffic, long-term or permanent berths for the locally registered pleasure craft may only be assigned under special conditions as so-called communal berths. In the ports open to public traffic, pleasure craft used for chartering may only use transit berths.¹⁰

Furthermore, it is also relevant to distinguish sport ports from marinas and other nautical tourism ports. In Croatia, sport ports are regulated as special purpose ports designated for privately used pleasure craft owned by the members of non-profit sport clubs. These ports are given on a concession to the sport clubs as their operators. It follows that, under Croatian law, charter fleets cannot be based in these sport ports.¹¹

Therefore, this article focuses on analysis of the contractual practices of marina operators as the main providers of berths and other accompanying services to yacht chartering companies.

Yacht chartering companies in Croatia must comply with the Ordinance on the Conditions for Conducting the Activity of Chartering of Vessels with or without Crew and the Provision of Guest Accommodation Services on Vessels (OCCACV).¹² A chartering company is defined as the owner or user of a vessel or a person who, under a written contract, has assumed responsibility for operating the vessel and who, by assuming such responsibility, has assumed the authority and responsibilities as laid down in the relevant maritime legislation of the Republic of Croatia related to the safety of navigation and protection of the sea from pollution (Article 2(5) of the OCCACV).

⁶ Official Gazette No 72/08.

⁷ Official Gazette Nos 68/07, 88/10, 30/14, 89/14, 152/14. This Act has been superseded by the Tourism Services Act of 2017, Official Gazette No 130/17.

⁸ V Hlača, J Nakić 'Pravni status marina u Republici Hrvatskoj' (2010) 1 *Periodical of the Croatian Academy of Legal Sciences* 175.

⁹ T Luković and others *Nautički turizam Hrvatske* (Redak 2015) 164.

¹⁰ Ordinance on the Criteria for Designating the Purpose of the Port Areas in the County and Local Ports Open to Public Traffic, Methods of Payment of Berthing Fees, Terms of Use, the Maximum Port Dues and Allocation of Port Authority Revenues, Official Gazette Nos 94/07, 79/08, 114/12, 47/13. However, unfortunately in practice there are numerous examples of communal berths being assigned to charter vessels on a long-term basis, which is not in accordance with the relevant legislation or the principal aim of the concept of communal berths.

¹¹ MDSPA art 81.

¹² Official Gazette No 42/2017.

Amongst the other statutory requirements that yacht chartering companies must comply with when performing yacht chartering services,¹³ the OCCACV prescribes that they must have a guest reception area, owned, leased or granted on a concession and it further provides specific protocols for admitting the guests. To comply with this requirement, chartering companies frequently enter into contracts with marina operators to be able to use the marina's premises and infrastructure. Under Croatian law, marinas (including their land areas and premises built thereon) are *res extra commercium*;¹⁴ therefore, it is considered that such property cannot be subject to a lease.¹⁵ Consequently, marina operators usually grant the right of use of the marina premises and infrastructure to the chartering companies based on a business cooperation agreement or under a separate contract similar to a rental of business premises.

Clearly, the inevitable requirement for the operation of any charter fleet is to have a permanent safe berth in a marina for each vessel of the fleet. Chartering companies therefore choose one or more marinas to base their business and vessels in. In the following sections, the salient features of the legal relationship between the marina operators and chartering companies will be analysed, including the respective contractual practices adopted by the marina operators and yacht chartering companies in Croatia in the context of the relevant national legislative framework. However, within the research project DELICROMAR, the topic has to a certain extent been studied comparatively in some other jurisdictions including Slovenia, Montenegro, Malta, Italy and Spain, whereby the authors have established that there is a considerable level of resemblance of the respective business practices in those jurisdictions.

The relevant sources, data and information for this study have been gathered through interviews and structured questionnaires with the representatives of a number of marina operators and chartering companies.¹⁶ Neither in the domestic nor in the international legal literature has the topic been dealt with so far. However, considering the economic importance of this subject in Croatia, we have endeavoured to bring it to the attention of the academic and professional audience.

Business cooperation agreements between marina operators and chartering companies

Business cooperation agreements are a sort of 'umbrella agreement' concluded between marina operators and chartering companies designed to set out the general principles of cooperation that will apply to more specific contracts regulating particular elements of their business and technical cooperation. The more specific contracts usually include berth contracts relating to the individual vessels of the charter fleet and contracts relating to the use of the marina premises, infrastructure etc. In practice, these umbrella agreements are usually entered into in respect of the larger charter fleets, whilst smaller charter fleets are commonly admitted to a marina without a written cooperation agreement and based only on annual berth contracts applying to individual vessels of the fleet. In the latter case, the parties sometimes design written agreements regulating the terms of payment of the berthing fees arising from all of the applicable annual berth contracts. Furthermore, in the latter case the parties may conclude a separate contract for the rental of business premises in the marina, or a similar contract for the use of the offices, bathrooms, toilets, showers, garages, parking places, storage areas, reception desks and other marina premises and infrastructure.

¹³ For example, there are rules prescribing compulsory requirements regarding seaworthiness and technical standards of the vessels used for chartering, administrative provisions regulating the centralised digital databases for the registration of crews and nautical tourists, rules on reporting to the Ministry of Sea Transport and Infrastructure etc.

¹⁴ MDSPA art 5; for a more detailed discussion on the matter see I Tuhtan Grgić 'The legal regime of nautical tourism ports in Croatia' in S Zunarelli, M Musi (eds) *Current Issues in Maritime and Transport* (Il Diritto Marittimo Bonomo Editore 2016) 273–97; see also Ž Mišić 'Unsolved questions in the application of the Maritime Domain and Seaports Act with suggestions for amendments' (2005) 44(159) *Comparative Maritime Law* 69.

¹⁵ According to the MDSPA, the commercial exploitation of the public maritime domain is possible only based on a concession (art 7(1)), a concession approval (art 7(2)) or a sub-concession (art 35), or in accordance with art 26 of the MDSPA whereby it is prescribed that a concessionaire may, with the approval of the public authority granting the concession, transfer a smaller volume of commercial activities falling outside the scope of the concessionaire's core business to a third party.

¹⁶ The research has covered 37 marinas run by 12 marina operators in Croatia, 2 marinas in Slovenia, 3 marinas in Montenegro, 4 marinas in Malta, 5 individual marinas and the association of marinas – ASSOMARINAS – in Italy, 4 marinas in Spain.

The main obligation of the marina operator under a business cooperation agreement is to provide to the chartering company a certain number of safe berths for the vessels listed in the charter fleet during a defined period. Usually, these are annual contracts subject to automatic extension in the absence of a timely notice of termination. A list of vessels in the charter fleet, including details such as the vessel's name, technical characteristics and the vessel owner's data form part of such business cooperation agreements. The structure of the ownership of the charter fleet is particularly important to the marina operator because chartering companies as contractual partners of the marina operator are not necessarily owners of the vessels in their charter fleet. In fact, in practice it is relatively common that the vessel owner is a *leasing* company or another company or a natural person that has leased the vessel to the chartering company. The fact that the chartering company is not the vessel owner may become a problem in the context of the enforceability of the marina operator's claims against the chartering company arising under the business cooperation agreement or under the berth contract. This is especially relevant in relation to the legal measures of retention and arrest of the vessel in respect of which the claim arose or another vessel of the same chartering fleet for the purpose of security of the marina operator's claim. In particular, the issue of ownership of the vessel is crucial in relation to the so-called sister-ship arrest, as contemplated under Article 3 of the International Convention Relating to the Arrest of Sea-going Ships 1952, to which Croatia is a party.¹⁷

In practice, the issue is dealt with in the framework of the business cooperation agreements or berth contracts requiring that the chartering company deliver the vessel owner's power of attorney for the exploitation of the vessel, as well as the owner's statement authorising the marina operator to retain the vessel until the chartering company settles all of the marina operator's claims in respect of the vessel. Ideally, the better to protect their legal position, marina operators should require that the vessel owner be included in the respective berth contract as a contracting party; in other words, the vessel owner's power of attorney should expressly include authorisation for the chartering company to enter into a berth contract for the vessel in the respective marina on behalf of the owner.

Some business cooperation agreements contain a detailed regulation of the payment methods of the annual berthing fees. Usually, the parties agree that the chartering company pay the annual berthing fees in instalments, and this applies to all berth contracts signed until the date of entry into the business cooperation agreement or to those that will be signed until the end of the current calendar year. According to the business practice of some marinas, payment in instalments can be approved only in respect of charter fleets of more than 10 vessels; otherwise, the rule is that the entire annual berthing fee for each vessel be paid until a certain date.¹⁸ The price of an annual berth usually depends on the length of the vessel.

If the chartering company fails to pay the berthing fee instalments according to the business cooperation agreement, the marina operator can cancel the cooperation agreement. In that case the individual berth contracts for each vessel remain in force provided that the chartering company has settled the individual berthing fees in accordance with the respective berth contracts. Usually, the fee payable for each vessel is due within seven days after signing the berth contract. However, if the chartering company fails to settle the outstanding berthing fees based on the individual berth contracts, the marina operator can cancel the respective annual berth contract and charge a daily rate of berthing fee for each vessel applicable to transit berths, in accordance with the valid marina operator's price list, retroactively from the date of signing the contract.¹⁹

Standard business cooperation agreements usually prescribe the chartering company's obligation to deliver a blank promissory note as security for the payment of the total annual berthing fee defined

¹⁷ On the issue of security for the marina operator's claims arising from berth contracts see AV Padovan 'Arrest of a yacht in a Croatian court for the purpose of securing a marina operator's claim' *Book of Proceedings, 2nd Intranslaw* (12–13 October 2017) 379–406.

¹⁸ The due date is usually 1 April, or sometimes 1 June or 1 August.

¹⁹ For more about the difference between the annual and transit berth contracts see Wolff V Skorupan, AV Padovan 'Are there any elements of the contract of custody in the marina operators' contracts of berth?' *Book of Proceedings, 2nd Intranslaw* (12–13 October 2017) 323–24.

in the cooperation agreement and the applicable berth contracts. Some of the business cooperation agreements regulate the marina operator's right to prevent any of the vessels of the charter fleet from leaving the marina until the marina operator's claims against the chartering company under the cooperation agreement and the valid berth contracts have been settled. Usually, the contracts prescribe that the exercise of the right of retention is subject to a written notice issued by the marina operator.

Some business cooperation agreements specifically regulate the marina operator's obligations regarding the supply of potable water and electricity for the charter fleet, together with the use of showers and sanitary blocks by the charter company's guests, employees and crews, and of cranes and travel lifts, car parks etc.

Business cooperation agreements sometimes provide for the chartering company's right to nominate representatives and a base supervisor in the marina, whereby these persons are obliged to comply with the marina's regulations. Some marina operators provide technical assistance services to the chartering companies under the respective business cooperation agreements, including the possibility of performing priority repair works on the charter vessels at the request of the chartering company's supervisor. In the case of severe violation of the marina's regulations, the marina operator may terminate the agreement immediately.

The most frequent features and clauses of business cooperation agreements between marina operators and chartering companies in Croatia have been described above. However, under the general provisions of the Obligations Act (OA),²⁰ the parties may freely regulate their contractual relationship according to their needs and expectations, but are thereby limited by the Constitution, *jus cogens* and social morality.²¹ Furthermore, the parties are obliged to act in accordance with the principles of good faith, and to observe the duty of cooperation, due performance, the law abuse prohibition and the other general principles of the law of contracts.²²

Berth contracts between marina operators and chartering companies

As explained above, whilst business cooperation agreements are usually concluded as general umbrella agreements, in practice the legal relationships between marina operators and chartering companies in respect of the charter vessels berthed in the marinas are regulated in detail under the individual berth contracts. Analysis of the various berth contracts used in practice shows that their contents and terminology varies, and we cannot yet speak of a standardised marina operator's berth contract.²³ In fact, various marina operators implement different models of berth contracts with different scopes of operator obligations towards the users.²⁴ In other words, berth contracts are innominate atypical contracts. The scope of the marina operator's liability under various berth contract models may range from the simpler contract for use of a safe berth (similar to a rental or a lease) to a more complex relationship whereby the marina operator undertakes certain obligations in respect of the vessel, thereby expressly or impliedly placing the marina operator in the position of a bailee.

Generally, under a berth contract, the marina operator undertakes the responsibility to provide to the chartering company a safe berth for a specific period of time. Berths must be used exclusively for the vessels listed in the charter fleet list. The chartering company is not allowed to allocate or rent these berths to third parties, or to use the berths for any other activity other than the chartering of vessels. Therefore, berth contracts between marina operators and chartering companies have many of the elements to be found in rental agreements.²⁵ The provision of a safe berth, in other words – rental of a safe place to berth a vessel, is the basic purpose of any berth contract between a marina operator and a chartering company.

²⁰ *Official Gazette* Nos 33/05, 41/08, 125/11, 75/15.

²¹ OA art 2.

²² *ibid* arts 1–15.

²³ Skorupan and Padovan (n 19) 317–22.

²⁴ *ibid*.

²⁵ A V Padovan 'Odgovornost luke nautičkog turizma iz ugovora o vezu i osiguranje' (2013) 52(167) *Comparative Maritime Law* 7.

A comparative analysis of marina operators' general terms and conditions of berth contracts for charter vessels shows that most marina operators apply a contract model that does not include the marina operator's obligation of care, custody or safeguarding of the vessels. The marina operators undertake to keep the port infrastructure and all facilities, devices and equipment in good order and condition, and to provide and maintain technically sound and nautically safe berths appropriate for the particular charter vessels considering their type, size, material, engines and other technical specifications.²⁶ Furthermore, the analysis shows that in practice most marina operators undertake to perform a certain level of control over the vessels whilst in berth, in other words they provide a monitoring service performed by the professional staff – the marina mariners coordinated by the marina port master. The monitoring is performed according to internally defined protocols and is usually supported by some specific information technologies. Most marina operators also implement CCTV monitoring and various other security systems.

It should be emphasised that, as a rule, the monitoring is only external and that in ordinary circumstances the marina staff would not board the vessels. In case of emergency, marina staff members are trained to intervene to prevent or mitigate any damage or loss occurring in the port. However, the marina operator's authority to intervene derives from the fact that, under the relevant public law,²⁷ the marina operator is the legal entity in charge of the port and is therefore responsible for the maintenance of good order, safety and security in the port.

The public law duty of care for the order and safety of the entire port must be distinguished from the marina operator's private law duties in respect of the individual vessels based on the valid berth contracts. The reality is that, in the case of the larger chartering companies usually based in the marinas, the piers are designed for their fleets and their staff members are continuously present in the marina, monitoring, attending and taking care of the charter vessels operated by the chartering company. Naturally, the marina staff will then be less engaged in monitoring those vessels (or, rather, not engaged at all), but they are still responsible for the management, monitoring, maintenance and sound and safe operation of the respective port infrastructure, including the mooring devices and berth equipment. In practice, the activities of the marina staff and the charter company's employees usually overlap, and good cooperation and coordination on that level is of great importance in the interest of both parties.²⁸

As stated above, berth contracts between the marina operators and chartering companies are concluded for a specific period, usually for one year. Special contract clauses are designed to regulate the terms of automatic renewal of the individual berth contracts, their early termination and the consequences of any changes in the charter fleet list etc.

Regarding the usual chartering companies' obligations under the berth contracts, in addition to the main obligation to pay berthing fees and the charges for water and electricity supply, it is especially important that the chartering company be responsible for the maintenance, safeguarding and safekeeping of the charter vessels berthed in the marina. In other words, the chartering company is responsible for the continuing seaworthiness of all the vessels in its fleet throughout the contract period. This also means that the chartering company must ensure that all vessel instruments, devices and equipment, including ropes, lines and fenders are in place and in good order and condition.

The integral parts of any berth contract are the regularly publicised marina operator's regulations, including in particular the regulations on the order in the nautical tourism port, marina house rules, the marina operator's general terms and conditions and the current price lists. The chartering company, by signing the berth contract, confirms that it has read and agreed to the respective documents. However, the marina operator contractually reserves the right to modify and amend the internal regulations. Violation of any of these regulations is treated as a breach of the berth contract.

²⁶ Skorupan and Padovan (n 19) 318.

²⁷ The relevant administrative law provisions are mainly contained in the MDSPA and the Maritime Code.

²⁸ For a more detailed discussion on the relevance of the coordination of the charter and nautical tourism port activities see N Jadrijević, I Kolanović and T Stanivuk 'Charter and nautical service quality in function of the nautical tourism port competitiveness' in P Vidan and others (eds) *International Maritime Science Conference 2017* (Faculty of Maritime Studies 2017) 373–80.

When it comes to the parties' liability for any potential damages, some berth contracts contain special provisions on such liability which prevail over the marina operator's general terms and conditions and other internal regulations. Most of the berth contracts analysed here contain clauses providing that the chartering company undertakes full responsibility for the performance of its activities, and will indemnify the marina operator against any loss, damage, costs, claims or proceedings caused to the marina, its employees or its users, by the chartering company. Furthermore, it is usually provided that the marina operator will assume no liability for any loss or damage to the property of the chartering company or third parties. However, this contractual exclusion of the marina operator's liability is subject to certain restrictions imposed by *jus cogens*. In particular, the exclusion could be challenged in a court based on the provisions of the OA containing certain mandatory rules on liability for damage caused intentionally or as a result of gross negligence and on any unfair contract terms.²⁹ Furthermore, marina operators' general terms and conditions of berth contracts frequently contain provisions excluding the marina operator's liability in specifically defined cases. For example, it is usually envisaged that the marina operator is not liable for damages caused by bad maintenance, neglect or generally poor state of the vessel or its equipment, loss of fenders, anchors, ropes and other equipment, or damages resulting from usual wear and tear etc.³⁰

In our opinion, these solutions seem to create an imbalance between the contracting parties and should be refined to reflect a clear contractual allocation of risk and certain reciprocity of the parties' liabilities. It is advisable to design adequate and precise indemnity clauses bearing in mind the general division of the parties' responsibilities. In other words, the marina operator caters for the soundness and safety of the port infrastructure, facilities, equipment and devices and for the order and safety in the port, whilst the chartering company is responsible for the safe and sound operation and management of the charter vessels.

The comparative analysis of the marina operators' berth contracts with the chartering companies leads us to a conclusion that, as a rule, the marina operators do not undertake any obligation amounting to custody over the berthed vessel. In fact, there are examples of berth contract clauses explicitly excluding the application of the statutory provisions regulating the contract of custody (or deposit) contained in the Obligations Act. However, this is sometimes contradicted by the contractual provisions on the chartering company's obligation to produce and update the vessel's inventory lists to be declared to the marina operator, and provisions excluding the marina operator's liability for the loss or damage to items not included in the vessel's inventory list when the damage or loss was caused by theft, pilferage or other malicious acts of third parties. Clauses like these imply that the marina operator is therefore liable for such loss or damage to the vessel's equipment listed in the inventory list, which in our opinion could be interpreted as an element of custody (bailment). It seems to us that marina operators seeking to operate strictly on the so-called berth rental model, excluding custody of the vessel and its equipment on board, should not require a vessel's inventory lists and exclude any liability for the loss or damage arising from third parties' malicious acts, theft, burglary or the like.

In practice, many marina operators apply equal terms of berth contracts to the vessels of chartering companies as to vessels used for private purposes. Therefore, in those marinas it seems that formally the scope of the marina operator's liability on the one hand and the obligations of the users of the berth on the other hand are equal for all vessels berthed in the marina. However, in practice the contents of the parties' obligations differ, which follows naturally from the purpose of the use of the charter vessels and the fact that charter vessels berthed in a marina are monitored and operated by the chartering companies whose offices and staff are usually located in the marina and whose commercial activity and certain public responsibilities related to their business are subject to special legal regulation. Consequently, if we compare the relationships between the marina operators and the individual users on the one hand and between the marina operators and the chartering companies on the other, the parties' respective liabilities arising from berth contracts are in fact similar but not equal.

²⁹ See OA arts 342, 345 and 294.

³⁰ See Padovan (n 17) 12–13.

Berth contracts usually envisage that the chartering company is continuously obliged to maintain an adequate liability insurance policy. However, these contract clauses are usually insufficiently clear. The parties should define the scope and limit of the required chartering company's insurance coverage, which should encompass the usual marine liability insurance for each charter vessel in the fleet as well as the employer's liability, general civil liability and the specific charter business liability. Furthermore, it would be in accordance with international practice to require the chartering company to show proof of valid standard hull and machinery and third party liability insurance policies on a regular basis for each charter vessel berthed in the marina. Finally, if there is a business cooperation agreement concluded between the parties, the respective contract clause on insurance should be implemented in the agreement, rather than in the individual berth contracts.

Berth contracts normally contain special provisions on environmental protection as well as on marina security measures. According to these provisions, the chartering company guarantees to act in accordance with the national legislation and the marina operator's regulations on the protection of the environment, occupational safety, fire-fighting protection, etc. For the purposes of ensuring the implementation of the respective protection measures, the chartering company is obliged to allow inspections authorised by the marina operator or the local or state authorities. Furthermore, the chartering company must perform all the necessary preventive measures for eliminating the risk of fire in its premises and comply with the legally binding fire-fighting standards. Storage and possession of flammable and toxic materials in the marina is strictly forbidden without certified permission issued by the authorised government agency. The marina operator guarantees to implement the necessary measures to ensure the safety and security of its facilities and premises.

Finally, berth contracts regularly envisage special rules on termination and cancellation of the contract. It is submitted that, in the business practice of Croatian marinas, the reasons for cancellation are usually defined too broadly, as they include any breach or violation of the contract terms, statutory provisions and internal marina operator's regulations by the chartering company. Furthermore, some berth contracts include the marina operator's right to cancel the contract in the event that the chartering company is not cooperative with other marina users or if it acts in a way which harms the marina's reputation. On the other hand, we have not found an example of a clause regulating the chartering company's right to cancel the contract. However, most berth contracts analysed contain a provision allowing both parties to terminate the contract at any time, in writing, without stating reasons and on a 12-month notice period. In the event that the marina operator terminates the contract, the chartering company must remove its vessel and equipment and vacate the marina's property immediately, whereupon the marina operator is not obliged to refund any berthing fees that have already been paid by the chartering company, regardless of which of the contracting parties terminated the contract.

Conclusion

For a yacht chartering company to be able to conduct its business it is a *conditio sine qua non* to base its vessels and business premises in one or more marinas. In practice, when larger charter fleets are involved, this partnership is frequently realised on the basis of a so-called business cooperation agreement, which serves as a framework agreement generally regulating the relationship between the marina operator and the chartering company. It usually includes terms of use of marina premises and infrastructure by the chartering company, the total number of berths assigned to the chartering company, the list of the vessels operated by the chartering company that will be based in the marina and assigned with a place for a safe berth, contract price, terms of payment, termination etc. In addition, a so-called annual berth contract is concluded in respect of each individual vessel regulating the parties' rights and obligations specifically related to the vessel. In the more frequent case of smaller charter fleets, marina operators and chartering companies usually conclude only berth contracts for individual vessels. Sometimes, these are combined with an agreement regulating terms of payment of all berthing fees arising from the individual berth contracts, and separate contracts on the rental of business premises situated within the marina. The marina operator's basic obligation under the business cooperation agreement is to provide the chartering company with a sufficient number of free berths for the exact number of charter vessels for a defined period.

Berth contracts are the main source for regulating the legal relationship between most marina operators and chartering companies. The predominant business model of Croatian marina operators when charter vessels are concerned is based on the concept of the annual contract for use of a safe berth with no or very few elements of custody or bailment. However, the standard berth contract wordings used by different marina operators vary considerably. Frequently, the parties use contract clauses that are too general, unclear and ambiguous, especially when attempting to define mutual liabilities and indemnities, insurance requirements and cancellation terms. Furthermore, the contractual practices of many marina operators do not distinguish between berth contracts with individual users and those with chartering companies, although the service provided to these two groups of clients differs markedly. On the other hand, the overall level of complexity and quality of marina operators' service in Croatia is high and it should be followed by an adequate legal framework in the interests of the legal certainty.

In our opinion, current contractual practices do not strike a fair balance of the legal relationship of the parties concerned and they lack clarity and precision. Standardisation of the relevant contractual clauses and forms would be a way forward. Furthermore, although the content and scope of the rights and obligations as defined in berth contracts between marina operators and chartering companies differ, it seems that in fact the existing business practices and the respective rules of the profession are common to all marina operators. Consequently, it is submitted that a legislative regulation of the berth contract as a nominate contract would be desirable as it would encourage further standardisation of marina operators' general terms and conditions and berth contracts and contribute greatly towards legal certainty.

Acknowledgement

This article has resulted from a research project conducted by the Adriatic Institute of the Croatian Academy of Sciences and Arts, funded by the Croatian Science Foundation and carried out from 1 March 2016 to 28 February 2019. The project is titled *Developing a Modern Legal and Insurance Regime for Croatian Marinas – Enhancing Competitiveness, Safety, Security and Marine Environmental Standards* (DELICROMAR). More information about the project is available from www.delicromar.hazu.hr.