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Croatian

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Adapting rights in rem

Croatia

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1 Which are the rights in rem that could arise from a succession under the law of this Member State?

Article 1(1) of the Ownership and Other Rights *in Rem* Act (*Zakon o vlasništvu i drugim stvarnim pravima*) (*Narodne novine* (NN; Official Gazette of the Republic of Croatia) Nos 91/96, 68/98, 137/99, 22/00, 73/00, 114/01, 79/06, 141/06, 146/08, 38/09, 153/09, 143/12 and 152/14; hereinafter referred to as: "the Act") states that, unless otherwise provided by law, any natural person or legal entity may hold the right of ownership or other rights *in rem*: servitude, rights arising from an encumbrance *in rem*, the right to build, and a lien on anything that can be the object of such rights.

Article 128(2-3) of the Act states that any heir is entitled to request that his/her right of ownership in immovable property be entered in a land register and that the acquisition of title by inheritance does not terminate any rights *in rem* that other persons previously held in the relevant property, other than those for which it is prescribed by law or those which, by the nature of circumstances, can no longer exist.

Articles 199(2) and 201 of the Act specify the following as personal servitudes: usufruct, right of use and right of residence. The articles also provide that, unless otherwise provided for by law, personal servitudes last only for the length of time for which they have been established and that they cease no later than on the date of the beneficiary's death.

Article 285(1) of the Act states that, unless otherwise provided by law, the right to build is as alienable and inheritable as other immovable property.

Article 299(1) of the Act states that no lien can be separated from the collateral to which it is attached. This means that, unless otherwise provided for by law, anyone who acquires a collateral on any legal basis has acquired it under a lien.

It therefore follows from the foregoing that rights *in rem* other than personal servitudes are inheritable. Unless otherwise provided by law, personal servitudes cease no later than on the date of the beneficiary's death.

2 Are these rights in rem recorded in a register of rights in immovable or movable property and, if so, is such recording compulsory? In which register(s) are they recorded and what are the registration requirements and procedure?

Article 2(3-4) of the Act defines 'immovable property' as a lot, tract, or parcel of land, including anything that is permanently attached to the land, either above or below ground level, unless otherwise provided by law, and 'movable property' (or 'chattels') as any item that can be moved from one place to another without any loss to its essential characteristics or substance. For legal purposes, property that by nature is movable is considered immovable if it belongs to an item of immovable property or if it is equated by law with immovable property.

Article 119(1) of the Act states that ownership in immovable property is acquired once the acquirer registers ownership in a land register, as provided for by law. For this to happen, the previous owner must have expressed his/her wish for the ownership to pass to the acquirer, unless otherwise provided for by law. Under Article 122(1) of the Act, a land register is considered to reflect, truly and in full, the factual and legal status of an item of immovable property.

Therefore, anyone acting in good faith, i.e. with confidence in the accuracy of land registers, who is unaware of the incompleteness of a particular record made in the land register or of the fact that the record differs from the actual situation, will have his/her rights protected under law in terms of acquisition.

Article 277(1) states that any encumbrance *in rem* that is not entered in a land register ceases to exist when the encumbered item of immovable property is acquired by a person who was neither aware nor should have familiarised him/herself with the fact that the encumbrance exists. Moreover, Article 278(1) of the Act states that, unless otherwise provided for, any encumbrance *in rem* created for the benefit of a natural person or legal entity will cease to exist when the natural person dies or when the personality of the legal entity lapses.

The procedure to follow for the entering in a land register of rights *in rem* held in immovable property is given in the provisions of the Land Registers Act (*Zakon o zemljišnim knjigama*) (NN Nos 91/96, 68/98, 137/99, 114/01, 100/04, 107/07, 152/08, 126/10, 55/13 and 60/13). A land register consists of the main register (in which all plots of land of a given cadastral municipality are entered and which is comprised of title deeds) and a compendium of identification documents. An application for a right *in rem* to be entered, temporarily or permanently, in the land register is made to the local land register court by a person seeking to acquire, change or waive his/her right to register. An application for a right *in rem* to be entered in the land register in the form of a register note is made by a person in whose legal interest it is that a note be created for his/her property or who is entitled to this procedure under a special regulation. The title deed contains details of the estate and any changes made thereto, as well as rights *in rem* and other rights conferred and enforced by a land register court. It consists of a document specifying the estate owned (*posjedovnica*) (specification sheet, sheet A), the certificate of title (*vlastovnica*) (proprietor's sheet, sheet B), and the encumbrances (*teretovnica*) (encumbrance sheet, sheet C)].

The procedure to follow for the registration of rights *in rem* held in vehicles is given in the Vehicles (Registration and Marking) Rules (*Pravilnik o registraciji i označavanju vozila*) (NN Nos 151/08, 89/10, 104/10, 83/13, 52/15 and 45/16). The Ministry of Internal Affairs keeps records of all registered vehicles. In response to a request from competent authorities (courts, the Croatian Financial Services Agency, notaries, etc.), the Ministry is required, under special regulations, to add certain notes relating to vehicles to said records and to driving licences. If a vehicle passes from one owner to another, the new owner is required to register the vehicle in his/her name or to deregister it within 15 days of the date of acquisition. An application to that effect is made to the responsible police directorate for the place where the new owner has a permanent home address or head office, or to a police station or a vehicle test centre, provided that the centre is approved and complies with the conditions set.

The procedure to follow for the registration of rights *in rem* held in nautical craft is given in the Maritime Code (*Pomorski zakonik*) (NN Nos 181/04, 76/07, 146/08, 61/11, 56/13 and 26/15). The right of ownership and other rights *in rem* in a ship, boat or yacht can be acquired, assigned, limited and terminated only by

entering the details of such an action into an appropriate register or into records kept by competent port authorities, which are managed by the ministry in charge of maritime affairs. In response to an application by the owner, operator or shipping company, entries in the register of ships are made based on a decision of the relevant port authority. The register consists of the main register and a compendium of identification documents. The main register consists of deeds comprised of sheet A (particulars identifying the maritime vessel and its basic technical features), sheet B (the name and registered office of the company, i.e. legal entity, or the name and home address of the natural person who owns the maritime vessel and the personal limitations of the owner relating to the free use of the vessel) and sheet C (rights *in rem* with which the maritime vessel is encumbered, as well as rights arising from said rights). The procedure to follow for the registration of rights *in rem* held in aircraft is given in the Civil Aircraft Register (Content and Method of Keeping) Rules (*Pravilnik o sadržaju i načinu vođenja hrvatskog registra civilnih zrakoplova*) (NN No 137/12). The Croatian Civil Aircraft Register is kept by the Croatian Civil Aviation Agency in hard copy and electronic form. The actual register book comprises volumes specified by ordinal numbers, each volume consisting of registration deeds. Each aircraft is entered in a separate deed, which comprises the registration sheet (containing various particulars of the aircraft), the owner's sheet (particulars of the owner and those of any co-owners or joint owners) and the encumbrance sheet (detailing the lien attached to the aircraft or the ideal share held by a co-owner, the right of first refusal and buy-back, any limitations relating to use, and containing an indication of the party to which the entry relates, the date of registration, the sum of money paid – where relevant for registration – with any notes made in connection with registration). The electronic register is kept by entering data into electronic registration deeds. In terms of content, electronic registration deeds are equivalent to those held in hard copy. An application for registration is made by the owner of the aircraft or operator and is accompanied by a certified authorisation letter from the owner. Entries in the register are made subject to a decision by the Croatian Civil Aviation Agency.

3 Which effects are linked to the registration of the rights in rem?

The law prescribes that a public document is a document issued by a competent court or public authority, in the prescribed form, within the limits of their competence. Furthermore, a public document constitutes evidence of the matter which it confirms or regulates. This means that anyone acting in good faith, i. e. with confidence in the accuracy of public documents, who is unaware of the incompleteness of particular information given therein, or of the fact that such information differs from the actual situation, will have his/her rights protected under law in terms of the acquisition of certain rights. In addition, no one may invoke ignorance of an entry having been made in a land register, in the records of registered vehicles kept by the Ministry of Internal Affairs, in registers kept by port authorities managed by the ministry in charge of maritime affairs, or in the Croatian Register of Civil Aircraft.

4 Are there specific rules and procedures in place for the adaptation of a right in rem to which a person is entitled under the law applicable to the successions in case the law of the Member State in which the right is invoked does not know such right in rem?

The law prescribes that rules governing *ex parte* actions should apply to all matters relating to the adaptation of a right *in rem* held by a certain person under the law applicable to inheritance, where such a right *in rem* does not exist in Croatian law.

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