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JAFFA & CO

Aviation &
Superyacht Lawyers

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MYBA OVERVIEW

Jaffa & Co is an award-winning law firm with a truly global client base. Specialising in superyacht law, we have advised on the construction, acquisition, financing, and dispute resolution of yachts, with an aggregate value of several billion euro. Our superyacht team has unrivalled expertise. We advise the most discerning clients from all corners of the globe, working closely with an international network of trusted professionals in every major superyacht jurisdiction.

Step 1: Letter of Intent

Ordinarily, a non-binding, non-contractual LOI will be submitted, accompanied by a 'good faith' deposit of 10% of the sales price. The deposit will be refundable until a binding contract is signed, and will be held by the brokerage firm or the attorneys.

Step 2: Memorandum of Agreement

The next step is a binding contract. Typically, the MYBA Memorandum of Agreement form is used (the MOA).

This sets out key details, such as price, clean/unencumbered title, the delivery location, and which party bears responsibility for the yacht.

It is a standard form document, that is accompanied by a bespoke Addendum, which sets out terms that are specific to the transaction.

Step 3: Deposit

Within 4 banking days after the contract is signed, the 10% Deposit becomes contractually due (or needs to be paid, if not already done). At this stage, it is no longer within the buyer's control to walk away and demand back their money (although they do still have that power after the sea trial – see below).

Step 4: Sea Trial

A sea trial takes place, lasting up to 4 hours. After completion of the sea trial, if the buyer decides that the Vessel has not performed to its satisfaction and they do not want to proceed with the purchase, they have 24 hours to give written notice. The Deposit will then be returned, less costs incurred for the sea trial, and the Agreement will be deemed null and void.

Step 5: Condition Survey

The condition survey typically occurs after the sea trial. After completion of the condition survey, if the surveyor has found any 'Defects' (discussed below) in the Vessel or her machinery, the buyer may within 7 days give to the Seller and Broker, (i) written notice requiring the Seller to make good any or all her Defects, or (ii) written notice of a price reduction to compensate for the Defects or (iii) written notice of their rejection.

If the vessel is rejected the Deposit will be returned to the buyer and the Agreement will be terminated.

'Defects' are those that an officially appointed Marine Surveyor (one whose day-to-day business is the surveying of vessels of similar quality and value of the Vessel) regards as affecting the Vessel's operational integrity or her machinery/systems, or which renders the vessel unseaworthy. This has to be certified in writing by the Marine Surveyor. The definition is unhelpfully vague, but is generally understood to be non-cosmetic items, and is not attributed to a financial threshold. For example, the absence of a working anchor could cost a small amount (hundreds of Euro) to repair, but would affect the vessel's operational integrity.

Step 6: Ownership Structure

Whilst the condition survey is occurring, an ownership structure will be implemented.

The structure we recommend will depend on whether the yacht is VAT-paid, the owner's personal domicile, and whether they wish to operate her as a private yacht or a commercial charter vessel.



Step 7: Title etc.

An investigation into the vessel's legal title will be undertaken, to ensure the seller is permitted to sell the yacht, and that she is free of debt.

There will be an investigation into the seller/current owning company to check they are in good standing. Under English law (which governs MYBA transactions) a sale can be reversed if the seller is not in good standing, so this is a crucial part of the process.

Unlike real estate, there is no central registry of title, so this is a paperwork exercise – and an important one.

Step 8: Completion

We will draft and negotiate all of the delivery documents, coordinate the provision of technical documents, and take care of the legal handover.

The location of completion of the purchase will be important, to ensure the VAT status of the yacht is managed properly. Completion will generally be in either international or European waters.

We can act as stakeholder / escrow agent for the deposit and the balance of the purchase price, for peace of mind. One risk with the industry-standard superyacht contracts is that they require the incoming owner to transfer the full purchase price before they obtain any title in the yacht. This means there is a period of time, be it minutes, hours or days, where the buyer has lost control of their money and has no claim to the asset. We would avoid this risk by implementing an escrow account, so that monies can be pre-positioned and do not need to move through the banking system at completion.

Step 9: Go Yachting...

...and enjoy!