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Superyacht &
Aviation Lawyers



CONSTRUCTION OVERVIEW

A Superyacht construction project is complex and high-value, and, as such, the importance of experienced advisors cannot be underestimated.

The Yacht Construction Contract is an essential part of the process, because it governs the ‘end product’ which is delivered, yet it needs to be agreed right at the outset. This is where the experience of a leading law firm pays dividends, because of the need to predict (based on previous projects) how the construction will unfold.

At its most basic level, we would ensure that the purchase price is paid in the correct instalments, and that the amount paid equates to each phase of the construction. For example, we would not want the Buyer to pay more than the Yacht (under construction) is worth at any one time, because the Buyer’s investment will be tied up in the asset itself. This point dovetails with the ownership of the Yacht whilst she is being built. There are obvious advantages to the Buyer owning the Yacht immediately, but there are also advantages to the Shipyard having title – in terms of physical and financial risk. Bank refund guarantees (see below) or a mortgage over the Yacht in favour of the Buyer may offer a more comforting alternative to ownership. Refund guarantees will often be ‘on demand’ guarantees for a cash payment, should the Yacht suffer a major casualty.

The Construction Contract governs everything from the tax status of the Yacht (which we may be able to mitigate to 0%), through to construction standards. It is difficult to summarise a 50+ page contract in an email, but the contract will ensure that the final ‘product’ is of sufficient quality in terms of interior noise levels, vibration levels, her range and achievable speeds – as well as a multitude of other aspects. These are all aspects which the Buyer will notice in the ‘real world’.

If the Yacht is to be built to commercial standards, we will need to ensure the correct Classification Society requirements are met. This will be led by the technical team, but it also needs to be conveyed accurately within the Construction Contract. Not only will this dictate how the Yacht operates, but it also impacts the re-sale value in the future.

Looking ahead to Delivery, we would assist with the

legal Delivery and her likely immediate export from the EU (for tax reasons), followed by her return to EU waters (or elsewhere).

As the build evolves, clients will typically ask us to review the contracts for the acquisition of tenders and other high-value assets, such as artwork, to be placed onboard. These can be substantial acquisitions in themselves and need to be managed properly.

Management and crew contracts with service providers will need to be prepared prior to Delivery, and thereafter, along with this, a law firm will attend to the ship registration matters.

It is (to our knowledge) unheard of for a Yacht to be delivered free of ‘snagging’ items and so the Shipyard warranties need to be very well drafted, to ensure minor issues are remedied promptly after handover and in such a way which minimises disruption to the Buyer’s use and enjoyment. The distinction between ‘minor’ and ‘major’ snagging items is critical, because there is an inevitable shifting of power once the Yacht is handed over. Until Handover/Delivery (and payment of the final purchase price instalment) the Buyer will have the full attention of the Shipyard, and perhaps less so once Delivery occurs. For this reason, it is common to place a financial threshold on defects, which allows the Buyer to resist handover until they are remedied or claim compensation to minor defects. At law, the Buyer cannot simply refuse to take Delivery on any grounds they choose, so the Yacht Construction Contract wording is important.

Without wishing to cause alarm, we also need to ensure the Buyer’s investment is protected, in the (very) unlikely event that the Shipyard becomes insolvent or the Yacht suffers a casualty. This would likely be achieved with bank refund guarantees which reimburse all payments if certain events occur. We can advise on the wording of these guarantees. Whilst the bank charges will be borne by the Buyer, it is money well spent.

The following is an overview of the key clauses contained in a typical Yacht Construction Contract. They are not set out in order of priority or importance; this is the order in which they typically arise in a Yacht Construction Contract.



Key contractual clauses:

Parties:

- The Buyer must ensure that it is contracting with the entity which owns and controls the Shipyard.
- A lot of Builders will use an empty shell company to contract with the Buyer, which is unhelpful if the Buyer ever needs to sue them, as it has no real value.

Build Standards and Classification Society:

- These are of course dealt with in detail, although they rely on a high-quality Specification being annexed to the Yacht Construction Contract.
- Anything not required by the Specification but required by the Classification Society and/or Regulatory Bodies should be provided and installed by the Builder at no further cost to the Buyer and shall be deemed to form part of the Specification.

Subcontracting:

- It is important that the Builder is responsible for the work of subcontractors, as well as their payment.
- How/where the Builder can subcontract must be covered.
- Typically, a list of approved subcontractors is included.

Conflict Between Documents:

- It is important to stipulate the order of precedence of the various documents.
- For example, the Specification usually takes overall priority, then followed by the terms of the Yacht Construction Contract. The General Arrangement Plan is the next important document.

Specifications and Plans:

- Full technical specifications including detailed design plans and build standards should be annexed to the Yacht Construction Contract.
- Procedures for agreeing modifications, plus the responsibility for costs incurred, must be addressed.
- The impact of modifications on the scheduled Delivery date must be addressed.
- The Builder shall remain responsible for the naval architecture, construction, fit out, launch, equipment, completion and Delivery of the Yacht and for all associated procedures, including all tests, trials and classification of the Yacht, up to and including the Delivery, excluding the Yacht's registration costs/fees which will be the Buyer's responsibility.
- Builder's decisions which alter the construction process, designs, drawings, blueprints or technical data must be submitted to the Buyer's representatives for pre-approval.

Buyer's Supplies:

- The Buyer shall, at its own risk, cost and expense, supply and deliver to the Builder at the Shipyard all of the Buyer's Supplies, together with any information and documents relevant to their installation by the Builder.
- The Builder shall be given sufficient notice of the arrival of each item of Buyer's Supplies, and of any special storage requirements and their value. The Builder shall keep the Buyer's Supplies insured.
- The Builder shall take all reasonable steps in accordance with any relevant insurance policy and customary norms for the safe storage of Buyer's Supplies at the Shipyard and shall exercise all



reasonable care in their handling and installation.

- Buyer's Supplies must be stored separately from Shipyard stores, and marked as being owned by the Buyer, in case of a Shipyard insolvency.

Inspections:

- The Buyer may appoint and send to the Shipyard at its own cost and expense the Buyer's Representative who shall act on behalf of the Buyer for the supervision of the Yacht's construction.
- The Builder shall, at its cost, provide adequate office space at the Shipyard for the Buyer's Representative.
- The Buyer's Representative should notify the Builder of any aspect of the Yacht's construction that he believes is not or will not be in compliance with the terms of the Yacht Construction Contract.

Construction and Delivery Schedule:

- Construction milestones and the timeline for completion must be set out clearly, with penalties for failure to meet such deadlines.
- Agreed Delivery date, Delivery location and conditions for Delivery acceptance.

Trials:

- Specific details pertaining to the Yacht's Sea Trials must be included. This is a very technical subject, because partial breakdowns during sea trials (which are not uncommon) must be dealt with, with robust re-trials. The Shipyard will want to limit the number of re-trials it must perform, whereas the Buyer will want to ensure the yard has a capped number of sea trials, after which it can simply reject the Yacht.
- Acceptance or rejection of the Yacht after the sea trial within the appropriate timeframe on account of a major defect, and remedy of minor defects prior to handover.

Price:

- The payment milestones must accurately reflect the

stage of construction, as certified by the Buyer's representative or the Classification Society.

- Typically, we expect payment to be in 8 tranches, depending on the size and value of the Yacht.

Performance Guarantees:

- The Builder must warrant the Yacht's speed, range, acoustic levels, vibrations and other measurables.
- There will usually be a grace period for characteristics which are narrowly missed and which have no meaningful impact on the enjoyment of the Yacht. Thereafter, liquidated damages will be charged. If the variance with the warranted characteristics exceeds a certain level, the Yacht can be rejected.

Title:

- Title will either remain with the Shipyard until Delivery. In which case, the Buyer would usually expect to receive bank refund guarantees and the benefit of insurance policies, in case of a casualty or a Shipyard insolvency. Or title will pass to the Buyer early in the construction process. If the latter applies, the Buyer will have the benefit of the insurance policies and will have the ability to remove the Yacht and complete the build in another Shipyard, should the Builder become insolvent. Our preference is for the Shipyard to retain title until final Delivery.

Taxes and Fees:

- The Yacht will typically be exported from Europe immediately upon Delivery. This will mitigate (avoid) VAT on the purchase price.

Warranties:

- These will cover the Shipyard warranty period, the scope of the warranty, the process of notification and the undertaking of repairs and what may be excluded.

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