



Coronavirus - What a new or prospective superyacht owner needs to consider right now.

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Introduction

Although there may be more immediate concerns arising from the COVID-19 health crisis, there are also important issues that yacht owners need to consider and prepare for, as we are doing with our clients.

This short article addresses a few that come to mind, and I will use a question and answer format:

1. I am about to sign a letter of intent (“Lol”) for a newbuild at “XYZ”¹ yard. What effect does the Coronavirus (COVID-19) crisis have, if any?

Potentially, many.

If the yard is in lockdown, the build will probably be delayed.

There are two clauses in most build contracts that you need to consider. The first is the “*permissible delay*” clause that extends the delivery date on the happening of specified events that may cause delay.

It is unlikely that COVID-19 is one of them, but you should check because each is different. In general (but not always), these clauses refer to some failure or default by the owner, so probably will not be affected by COVID-19.

The second is the “*Force Majeure*” clause.

Most force majeure clauses allow a delay in the build if a force majeure event interrupts or delays progress. Often these clauses include express provisions about government restrictions that impact the contract (what used to be called “*restraint of princes*”), but in general (but not always, as it depends on the wording of the relevant clause), the event should be unforeseeable when the contract is signed (see also my comments under section 3 relating to ICOMIA refit contracts).

¹ Not intended to refer to a real yard but used as a hypothetical example only.

So check your build contract, and its date of execution, and take appropriate advice about your rights. It may be difficult for a yard to argue that delay due to COVID-19 is unforeseeable now.

This of course applies to both owners and yards.

Also note that if the force majeure clause does cover the delay, then after a set period of time – say, 180 or 360 days – the owner may have the right to cancel the contract and ask for money paid in advance back. Again, read the contract and see what it says, then get advice. You may need to act quickly/

Also, check your refund guarantee, if you have one. Your up front payments are probably secured by one, and in a crisis situation, it is good to know if you are secured.

Finally, let's not forget the impact of any government or local regulation and whether that provides any comfort to the owner, builder or both. Again, I repeat, seek advice.

The health and safety of crew, yard workers and others should always be placed at the forefront of any decision taken.

2. I have signed a charter on MYBA standard terms. It looks like we can't perform it now. What are my rights?

If you charter your yacht out under the standard MYBA Charter Agreement, then the good news is you already have a force majeure clause incorporated.

Unfortunately, in my opinion, it is not the most specific or clearly drafted clause and a number of its standard provisions favour the charterer (so happy days if you are the charterer).

For example, if redelivery of your yacht from a previous charter is delayed for reasons connected with the outbreak of COVID-19, your existing charterer is unlikely to be obliged to pay any additional charter fee for the period of delay.

Moreover, if the delay means you are unable to deliver the yacht to a following charterer on time, you might find that they terminate their charter (as they are entitled so to do under the MYBA charter agreement) leaving you significantly out of pocket.

A further example is that broker's fees are also still payable by an owner even if the charter does not go ahead for reason of force majeure.

Of course, as an owner, you should have amended these clauses. If not and you are engaged in charter operations, I recommend a review of your MYBA

charters and the inclusion of appropriate wording to protect your position in the future.

Similar considerations apply to other standard form charter agreements.

3. My yacht is due its 5/10 year survey at “XYZ” yard. How will COVID-19 impact works?

Unfortunately, it is likely that works may be delayed given the current outbreak. We know that some of our clients may be affected in some cases.

However, most refit and repair contracts are concluded subject to ICOMIA standard terms.

The terms incorporate a force majeure clause that can extend the delivery by way of “*permissible delay*” as therein defined – possibly good news for the contractor / yard.

The clause includes circumstances such as epidemic and quarantine as well as acts of government authorities all of which are relevant in the present circumstances.

It is possible that a maximum force majeure period has been stipulated in the agreement so ensure that you check it carefully. If so, redelivery of your yacht by the yard will be delayed beyond the anticipated redelivery date.

The helpful news is that, as an owner, you may be entitled to liquidated damages from the contractor, if the force majeure event is sufficiently prolonged and if stipulated on the front page of the contract – of course your yacht is still delayed leaving the yard.

You’ll want to ensure that you have included a maximum force majeure period – if this is not the case, and the contract is still under negotiation, consider amending it to include 1 month grace period so that it is not open ended.

Beware that while many force majeure clauses provide for circumstances not reasonably foreseeable by either or both parties, the standard ICOMIA force majeure clause provides only for circumstances “*beyond the Contractor’s control*” and so COVID-19 may continue to fall within the force majeure provision in contracts executed throughout the course of the outbreak, even though the repercussions of the outbreak are now very much foreseeable.

4. General Considerations

Everything I say above should be considered against the background of our social obligation to work together to minimise risk and promote safety.

For example, the yards and owners I work with are socially responsible and a heavy-handed approach would not be appropriate in a time of crisis, nor is it necessary. The superyacht industry is a small and tightly knit community.

In our next article, we will look at seafarer employment and welfare issues, which of course should be uppermost in our collective minds.

Seafarers in particular probably feel relatively powerless. They are absolutely vital to your yacht operations, and now is the time to show solidarity with them and not rely just on the black letter provisions of your SEAs (Seafarer Employment Agreements) or MEAs (Master Employment Agreements).

We have extensive experience in this area and will offer some general guidance through the issues.

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See our other related article: [Guidance note: Coronavirus \(COVID-19\) Overview](#)

Check back for further updates from our superyacht team at Bargate Murray soon.

Further information

For further information or advice, please email: yachtgroup@bargatemurray.com

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