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# Understanding Italian law yacht construction mortgages

In the context of newbuilding projects, shipbuilders often provide refund guarantees (RG) to secure the repayment of instalments in case of early termination of the shipbuilding contract (SBC). However, most Italian builders propose, as an alternative approach, to transfer title (ToT) over the yacht during construction; similar practices are adopted also by some Dutch and German shipyards. If this was accepted by the buyer and his financiers, most lenders would request to register a mortgage over the yacht under construction in lieu of an assignment of the benefit of a refund guarantee. In this article, we will explore the legal framework, the construction mortgage registration process, and the main issues of enforcement of construction mortgages in Italy.

## 1. The Legal Framework

Italian builders are required to declare the commencement of yacht construction to the local Register of Ships Under Construction (Registro delle Navi in Costruzione or "RNC"). Normally, the builder remains the sole owner of the yacht under construction until its delivery and acceptance by the buyer. However, the parties can agree to a ToT occurring during the construction phase. The Shipbuilding Contract (SBC) should therefore outline the terms of the transfer of ownership concurrently with the payment of pre-delivery instalments. Under Italian law, a ToT is not a mere security assignment but it is the actual acquisition of title to the portion of the yacht as this it being built. The SBC usually provides that the transfer of ownership does not imply a transfer of risk or acceptance of the portion built, as the builder remains responsible for insuring and delivering the yacht in accordance with the terms of the SBC. Once the buyer acquires title over the yacht under construction, they can grant a construction mortgage to their financing bank as security for their pre-delivery financing obligations.

## 2. The Mortgage Registration Process

From the lender's perspective, the first step in the mortgage registration process is to ensure that the buyer has correctly acquired title over the yacht

under construction and that the publicity requirements under Italian law have been complied with. The builder and buyer must enter into a "deed of acknowledgment of transfer of title" (atto ricognitivo). Subsequently, the buyer grants a construction mortgage in favor of the lender.

The RNC issues a transcript of the register, which serves as evidence of the transfer of title and registration of the construction mortgage. The records of the RNC are publicly available, allowing interested third parties to access it and so all third parties are deemed to have knowledge of the mortgage. For the process to be completed, all relevant documents must be translated into Italian, notarized, and the parties must have an Italian tax code ("codice fiscale").

## 3. Mortgage Enforcement

In principle, a mortgagee can enforce the construction mortgage only if an event of default (EoD) under the loan agreement has occurred, irrespective of any termination event under the SBC. Mortgage enforcement in Italy usually involves court proceedings in the local court where the construction is taking place, as self-help remedies are not expressly allowed at law. This process typically requires the appointment of an expert and may

involve a public auction conducted by a judge or a notary public.

As an alternative to court proceedings, the construction mortgage may include a provision allowing the mortgagee to conduct a private sale. This provision often takes the form of an irrevocable power of attorney exercisable if an EoD continues. The lender must exercise any power of sale in good faith, with protection of the interests of the mortgagor.

Practical considerations for mortgage enforcement include the need for the registration of the construction mortgage to prevent the builder from selling the yacht without the lender's consent in case of the buyer's default. Coordination and subordination agreements with the builder are usually considered, particularly in the event of SBC termination for buyer's default and forced sale. The outcome of mortgage enforcement will largely depend on the stage of construction reached.

#### 4. The Proceeds Waterfall

When distributing the sales proceeds, certain liens on the yacht may take priority over the mortgagee. These typically include legal costs owed to the State, expenses incurred for the common interest of creditors related to the sale and preservation of the asset, crew wages, remuneration for assistance and salvage, indemnities for collisions or other accidents of navigation, and claims resulting from contracts or acts by the master. These are often sources of dispute between interested parties and they will be settled by the court that has the supervision of the enforcement.

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### Conclusion

Construction mortgages are commonly used in yacht projects involving Italian-built super yachts. The legal framework and practices surrounding construction mortgages in Italy have been well developed and are generally accepted by major banks involved in pre-delivery yacht financing. We have been involved in several superyacht projects involving projects built at major Italian builder and can assist with transfer of title and mortgage arrangements.

### Contact us



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