

Private Equity Deal Structure

Marine Money / HVB

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Edward Horton

SEWARD & KISSEL LLP

One Battery Park Plaza
New York, New York 10004
Tel: (212) 574-1265
Fax: (212) 480-8421
E-Mail: horton@sewkis.com
Website: www.sewkis.com

I. Private Equity Investments

- **Newly Formed or Existing Private Company**
 - Initial stage or follow-on
 - Terms for established companies generally more favorable
 - Single “sponsor” investor or multiple investors
 - Private placements pursuant to Rule 144A / Reg. S
 - 144A Private Placement Memorandum
 - Founder / company are co-investors
 - contribution - cash, assets or combination
 - Private equity investment may be part of larger financing strategy
 - “Bridge” financing / other sources of debt financing

I. Private Equity Investments (continued)

- **Existing Public Companies**

- Existing public companies also access private equity through “PIPE” transactions
 - Unregistered “restricted” common stock with registration rights
 - Recent Rule 144 amendment allows re-sales after 6 months
 - Lower transaction costs / fees than follow-on public offering
 - Less disclosure requirements than public offerings
 - PIPE securities often sell at a discount due to limited liquidity

II. Private Equity Investment Structure

- **Selection of Corporate Structure**
 - Economic / governance terms
 - Corporation
 - Preferred equity / Shareholder agreements
 - Subordinated share classes
 - Preferential dividends / liquidation preferences
 - Partnership / Limited liability company
 - Partnership Agreements / operating agreements
 - Preferential distributions
 - Considerations include the management structure and issues unique to shipping companies

II. Private Equity Investment Structure (continued)

- **Shipping Company Issues**
 - **Strategic investor or a passive investor?**
 - How much control of strategic / commercial vessel management
 - **Affiliated management companies**
 - Inside or outside of company
 - Corporate opportunities reserved for company
 - Non-complete clauses
 - Related party transactions

II. Private Equity Investment Structure (continued)

- **Governance / Control**
 - Board Representation / voting rights
 - Extent of Board representation
 - Control or transparency
 - Shareholder voting rights
 - Protective voting provisions
 - Chartering
 - Vessel / other asset acquisitions or dispositions
 - Incurrence of debt / other financing arrangements
 - Amendments to corporate documents or other changes to capital structure
 - Amendments to vessel management agreements

III. Investment Terms

- **Investment in Management**
 - Investment in people and management
 - Private equity investors typically seek employment agreements for key management persons
 - Employment agreements for term of years
 - Non compete provisions
 - Economic incentives / disincentives to retain key management persons
 - Vessel management agreements
 - Terms of management agreements established in advance – amendments may require investor consent
 - Key man provisions
 - Representations and Warranties
 - Trigger of default provisions

III. Investment Terms (continued)

- **Economics – The Cost of Money - Preferential Investor Returns**
 - The “Water Fall” – Distribution of net profits
 - Return of investment
 - Preferred return to private equity investors
 - Annual rate of return – may or may not be cumulative
 - Carried interest to Founder
 - Remaining profits distributed to all equity holders
 - Liquidation Preferences
 - Initial investment plus unpaid preferred return
 - Remaining assets distributed to all equity holders
 - Default events may trigger additional preferences

III. Investment Terms (continued)

- **Economics - Investment**
 - Valuation of a shipping company
 - Asset value or something more
 - timing of valuation
 - Name / reputation of the company and its principals or management company
 - Value of any existing relationships / charters cash flow
 - Founder's investment risk
 - Initial contribution or continuing percentage interest
 - May be cash or assets
 - Pre-emptive rights

IV. Investment horizon and Exit Strategies

- **Initial Public Offering**
 - Subject to equity markets / underwritten offer
 - Investors / founders generally don't sell directly into public offering, although limited number of secondary shares may be included
 - Value lies in liquidity of a public trading market
 - Allocation of public company shares among Investors and Founders
 - Market Standoff or “lock-up” agreement
 - Post IPO re-sales by ‘insiders’ subject to trading restrictions under US securities laws and company policies
 - Registration Rights and secondary offerings
- Foreign private issuers in US except from most provisions of Sarbanes-Oxley / and Exchange requirements applicable to US Companies
- Financials prepared in accordance with IASB's International Financial Reporting Standards

IV. Investment horizon and Exit Strategies (continued)

- **Limited Duration Company**

- Orderly liquidation after a term of years – duration negotiated in advance and may be subject to extension with investor consent
- Liquidation process may require sale of assets or may provide for in-kind distributions
 - Founder / management may negotiate right of first refusal / first offer over assets in event of dissolution
- Distribution of assets – cash proceeds or in kind - generally subject to preferred returns

IV. Investment horizon and Exit Strategies (continued)

- **Registration Rights**
 - Demand registration rights
 - When they may be requested
 - How many demand rights
 - “Piggy back” registration rights in the event of registration of other shares

- **Sale of Company**
 - “Drag-along” rights may require all shareholders to sell pro-rata