

Project Helios: Transaction Documents – Overview of Key Legal Attention Points

1 Introduction

This overview is prepared in the context of the related parties transactions procedure in accordance with Article 7:116 of the Belgian Companies and Associations Code. It is intended to assist in assessing the terms and conditions of certain Transaction Documents (as defined below) in the context of (i) the sale of 24 vessels (the “**Vessels**”) by Euronav NV (“**Euronav**”) to Frontline plc/Frontfleet Ltd. (“the “**Fleet Sale**”) and (ii) a settlement without one-time compensation for Euronav of the arbitration proceedings in relation to the termination by Frontline of the combination agreement dated 10 July 2022 (the “**Settlement**”).

The table below sets out an exhaustive overview of the key attention points in relation to the following agreements (the “**Transaction Documents**”):

- (i) the draft framework agreement (latest draft received on 2 October 2023) between Euronav and Frontline plc (the “**Framework Agreement**”);
- (ii) the draft memorandum of agreement (latest draft received on 2 October 2023) between Euronav and Frontfleet Ltd. (“**Frontfleet**”) in relation to the sale of each of the Vessels (the “**MOA**”);
- (iii) the draft heads of agreement between (latest draft received on 2 October 2023) Euronav and Frontfleet Ltd. setting out the overarching and coordinating terms for such MOAS (the “**HOA**”);
- (iv) the draft ship management agreement (latest draft received on 2 October 2023) between Frontfleet and Euronav Shipmanagement (Hellas) LTD (the “**Shipman**”);
- (v) the draft settlement agreement (latest draft dated 2 October 2023) between Euronav and Frontline, Famatown Finance Limited, Hemen Holding Limited and Geveran Trading Co. Limited (the “**Settlement Agreement**”).

The versions of the Transaction Documents that have been reviewed for the purposes of this overview are the drafts prepared by Argo Law and Allen & Overy as counsel to CMB and Frontline, respectively. Terms not otherwise defined in the below table shall have the meaning ascribed to them in the relevant Transaction Documents.

For the purposes of this assessment, the draft share purchase agreement (latest draft dated 2 October 2023) between Frontline and CMB NV regarding the sale by Frontline plc of all its shares in Euronav to CMB NV (the “**Share Sale**”) has also been reviewed.

2 Interconnectivity between the Transaction Documents

The Transaction Documents are interconnected and we understand they have been put forward as a non-negotiable package. The completion of the Share Sale is a condition precedent for the Fleet Sale and the Settlement, such that the Fleet Sale and the Settlement shall not complete until the Share Sale has been completed. If this (or any other condition precedent) under the Framework Agreement would not be satisfied prior to 31 December 2023, both Euronav and Frontline shall have the right to terminate the Framework Agreement, also resulting in an automatic termination of the HOA and MOAs.

3 Overview of key attention points

Legend :



#	Reference	Terms and conditions	Linklaters comments
A. Framework Agreement			
1	Parties N/A	The Framework Agreement is only entered into between Euronav and Frontline. Its subsidiary Frontfleet is not a party thereto.	Given that the HOA and MOAs will be entered into between Euronav and Frontfleet, it would be preferable to also have Frontfleet being a party to the Framework Agreement. Given that Euronav is not a party to the share purchase agreement for the sale of Frontline's shares to CMB NV, Euronav would not have direct recourse against CMB NV if the Share Sale, and therefore also the Fleet Sale, does not complete for a reason attributable to CMB NV (e.g. failure by CMB NV to pay the purchase price for the shares).
2	Long Stop Date <i>Clause 3.1</i>	The Long Stop Date has been set to 31 December 2023. If the Conditions Precedent have not been fulfilled by that date, the Fleet Sale will not complete.	Euronav to note and consider whether a Long Stop Date of 31 December 2023 is realistic.
3	Certainty of funds N/A	The Framework Agreement does not provide pre-signing proof by Frontline plc / Frontfleet Ltd. that it has the funds available to pay the purchase price.	Clause 7.3 does contain a mere representation that Frontline plc has required funds available, with a dollar-for-dollar indemnification if that representation would not be correct. In addition, Frontline undertakes to make a deposit of 10% of the Purchase Price for the Vessels, but only as from the moment that the Share Sale has been completed, pursuant to Clause 2 of the MOA. This shall be paid by CMB NV on behalf of Frontfleet Ltd. as partial payment under the Share Sale. However, in a transaction of this size, it would not be uncommon to require evidence, before signing the Framework Agreement, that the required funds are effectively available beyond a mere representation. It is recommended to ask more information in this regard.

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			We also note that, in the SPA, there is also no similar requirement on CMB NV for the availability of funds for the share purchase price and the mandatory public takeover.
4	Absence of MAC clause N/A	The Framework Agreement (or any other Transaction Document) does not contain a MAC clause to address unforeseen circumstances or events that could significantly impact the contemplated transactions.	The absence of a negative MAC clause with walk-away right provides higher certainty that the transaction will complete (if the other conditions are fulfilled). A positive MAC clause, on the other hand, would protect Euronav for an unforeseen increase of the fleet value. Positive MAC clauses are rather uncommon, but Euronav could take the absence of such a positive MAC clause in account for its overall assessment of the transaction.
B. HOA			
5	Parties and certainty of funds N/A	Euronav as Seller and Frontfleet “or a special purpose vehicle nominated and guaranteed by Frontfleet” as Buyer shall enter into the MOAs. Frontline warrants to Euronav under Clause 6.3 of the Framework Agreement that it has obtained sufficient funding to comply with its obligations in respect of the Fleet Sale (see item 3 above). However, no warranties are provided by Frontfleet under the HOA.	It could be considered to also include Frontline as guarantor for the obligations of Frontfleet. The MOA refers to the possibility for Frontfleet to appoint a “guaranteed nominee” in the individual agreement. It is not fully clear how this guarantee structure would effectively work to ensure that a financial sound buyer from the Frontline group is the effective buyer. Regarding the availability of funding we recommended to request evidence of actual payment capacity. Frontfleet Ltd. is a Bermuda entity. It should be considered whether receiving payments from a Bermuda entity creates (tax) complexities.
6	Employment liabilities Clause 8.2	Euronav will indemnify and hold the Buyer and its affiliates harmless on a USD per USD basis for any Employment Liabilities. This indemnity is unlimited and uncapped.	This can for instance be relevant if the Shipman would be terminated, given that Frontline will not take over the relevant employees. Euronav to assess the impact, including on the social liabilities (<i>sociaal passief</i>).
C. MOA			
7	Inspection Clause 4	In case no material or negative findings have been identified during the virtual inspections, the Buyer will accept the Vessel on such basis and on the basis that the Vessel has been maintained in accordance with the rules and regulations of the Classification Society and the Vessel's flag state.	By referring to the general rules and regulations of the Classification State and the Vessel's flag state, the inspection clause goes beyond the standard terms of the Norwegian Saleform. It is further unclear what is considered to be a material or no negative finding.

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		In case of a material or negative findings during the virtual inspection, the Buyer shall undertake an additional inspection of the Vessel without costs to Euronav.	
8	Time and place of delivery <i>Clause 5</i>	<p>The Notice of Readiness shall not be tendered before the completion of the Share Sale. The Vessel shall be delivered and taken over worldwide, safely afloat at sea or at the first available safe and accessible berth or anchorage after discharge, to be mutually agreed between the Parties.</p> <p>If the Vessel cannot be delivered within sixty (60) days after completion of the Share Sale, the Buyer shall be entitled to either cancel the respective MOA or accept a new Cancelling Date as proposed by Euronav.</p> <p>The date of completion of the Fleet Sale shall fall on the same date as the Delivery Date of the final Vessel.</p>	<p>Euronav to note and consider whether a Cancelling Date of 60 days following completion of the Share Sale is realistic.</p> <p>It is further unclear what is considered to be the “final Vessel” in the event that the Buyer would cancel one or more MOAs.</p>
9	Drydocking <i>Clause 6</i>	<p>If during the underwater inspections the underwater parts below the deepest load line are found broken, damaged or defective so as to effect the Vessel’s class, and unless repairs can be carried out afloat to the satisfaction of the Classification Society, the Seller shall (or the Buyer shall, if the inspections were carried out after delivery) arrange for the Vessel to be drydocked at their expense. Such defects shall be made good by the Seller (or Buyer, if the inspections were carried out after delivery) at the Seller’s expense.</p> <p>If the Classification Society does not require the defects to be rectified before the next class drydocking survey, the Seller shall pay the Buyer the estimated direct costs of carrying out the repairs.</p> <p>If the Vessel does however have to be drydocked after the delivery and no suitable drydocking facilities are available at or in the vicinity of the place of delivery, the Buyer shall take the Vessel to a port where suitable drydocking is available. The direct costs shall be for the Seller’s account.</p>	<p>As the costs for inspections after the Delivery Date are borne by the Buyer, Euronav to consider whether it would be appropriate to also allocate the drydocking costs (including the costs to take the Vessel to another suitable port) to the Buyer. Likewise, Euronav to consider to allocate future costs for defects which were detected after delivery and for which the Classification Society does not require rectifications before the next class drydocking survey to the Buyer.</p>
10	Financing release <i>Clause 9</i>	<p>The MOA requires Euronav to deliver the Vessels free of “encumbrances” (which is drafted very broadly) and to ensure the release of relevant encumbrances one day before the Delivery Date.</p> <p>The discharge and release of any encumbrances shall in any event take place before the Buyer’s pre-position of the Purchase Price (in accordance with Clause 3 MOA).</p>	<p>The one-day deadline and the commitment to release and discharge any encumbrances before the pre-position of the Purchase Price is in contradiction with Clause 3 of the MOA, that stipulates that the pre-position will take place minimum two Banking Days prior to the scheduled Delivery Date.</p>

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			Further, it may be more appropriate, as is customary, to have the actual delivery of the Vessels as deadline for the release of the encumbrances (and hence not before the Delivery Date).
11	Condition on delivery <i>Clause 11</i>	The Vessel shall be delivered in substantially the same condition as she was at the time of inspection. In the event that she would not have been inspected prior to the Delivery Date, in substantially the same condition as described in the Inspection Documents, but always in accordance with the rules and regulations of the Classification Society and the Vessel's flag state.	By referring to the general rules and regulations of the Classification State and the Vessel's flag state, this clause goes beyond the standard terms of the Norwegian Saleform.
12	Indemnities <i>Clause 15</i>	The Seller undertakes to indemnify the Buyer against all claims arising prior to or on the Delivery Date in relation to (i) Clause 9 (<i>Encumbrances</i>); (ii) Clause 6 HOA (<i>Charters</i>) (for instance if the Charterer does not consent to change of ownership, or for any obligations that might be incurred towards the TI Pool); and (iii) Clause 7 HOA (<i>Sanctions</i>).	The Seller already warrants under Clause 9 MOA that, at the Delivery Date, the Vessel shall be free from all encumbrances. No additional indemnity should be provided. Euronav to further note and consider whether an indemnity in relation to the existing Charters and sanctions is acceptable.

There are no specific legal attention points to note regarding the Settlement Agreement and the Shipman.

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