WATSON FARLEY
&
WILLIAMS

MARITIME LOAN PORTFOLIO SALES/TRANSFERS

Factors driving decision to sell/buy

Seller's perspective

- Regulatory pressures, capital costs
- Strategic decision to exit shipping, deleverage, changing criteria within banks
- Banks inheriting loan(s)/portfolio(s) from another bank
- Restructuring "fatigue" or breakdown of client relationship
- Banks cannot see early recovery in particular sectors within the shipping markets

Debt purchaser's perspective

- Opportunity to add new owners/relationships or expand existing relationships
- Refinancing of loans which have been subject to a haircut
- Distressed debt will sell at a discount
- Private equity/hedge funds:
  - relationship with owner not always key factor, loan to own?
  - aim to make quick recovery and exit or to achieve targeted returns
  - different regulatory environment to banks

© Watson Farley & Williams 2015

Due Diligence – key issues
Structural difficulties/regulatory obstacles and legal risks

- Regulatory issues, need for banking licences
- Buyer meets transferee criteria in documentation – "bank or financial institution"
- Data protection laws/confidentiality provisions/banking secrecy laws of seller's jurisdiction
- Jurisdictional issues relating to security – impact structure and form of documents used (e.g. owner's/second mortgagees consent to ship mortgage transfer)
- In a portfolio of loans there will be a mix of governing laws, diversity as to language, format and structure of documentation and a mix of performing/non-performing loans
- Majority syndicated facilities– consider pari passu stakes and whether you will obtain/maintain majority lender position (some loans may require all lender consent for acceleration or even waivers)

© Watson Farley & Williams 2015

Due Diligence – key issues
Structural difficulties/regulatory obstacles and legal risks (continued)

- Borrower consent required? Consent of other lenders required?
- Is the buyer or seller prepared to risk permanent sub-participation?
- Other roles moving e.g. swaps, agency, account bank etc
- New security (e.g. a new accounts pledge) can be set aside in insolvency or subject to hardening periods and Borrower co-operation required for opening of new accounts (KYC)/moving credit balances
- Typical ship finance transaction involves interface with key third parties – e.g. manager, insurers, charterers
- Beware:
  - undrawn facilities (seller released from obligations); revolving credit facilities; bilateral facilities – security should not fall away
  - effect of swaps/derivatives (weak intercreditor position)

© Watson Farley & Williams 2015

Due Diligence – key issues
Factors influencing pricing

- Complexity of the transaction
- Is revenue impacted by timing? - If so, watch out for unforeseen pitfalls/nasty surprises
- As a seller consider whether you need to carry out due diligence on the loan/portfolio being sold to assess issues and judge price accordingly
- Consider cost of exit strategy (enforcement costs, amount of trade debt, maritime liens that may prime the mortgage, Ch 11/German/Italian insolvency or liquidation remedies available to the borrower)
- Value of assets
- Tax issues in buyer's or seller's jurisdictions (as a result of the sale/transfer)

© Watson Farley & Williams 2015

Key negotiation issues

- Form of documentation – LMA trade confirmation and transfer certificate or sale and purchase agreement, bespoke agreement (useful where loans will transfer at different times or in multiple stages, prescribes closing steps)

- Will typically contain a negotiated range of representations/warranties

- Has the current lender reserved its rights or could the borrower argue the current lender has waived its rights under the documents through passivity or inaction? Have notices been correctly served in relation to defaults?

© Watson Farley & Williams 2015

Conclusions

- Landscape in ship lending changed/changing – traditional lenders exiting/deleveraging/scaling back
- Difference in approach and motivations between original lenders and buyers of debt
- Sales and transfers of shipping debt increasing – sellers and buyers appear to be agreeing on pricing of debt
- Sanctions – particularly where buyers are US based or US influenced
- Curveballs come with a cost – delays, resource spent tackling issues – as a seller consider whether more efficient/cost effective to carry out due diligence early on

© Watson Farley & Williams 2015

WFW Offices

ATHENS

6th Floor, Building B
348 Syngrou Avenue
Kallithea 176-74, Athens
T: +30 210 455 7300

BANGKOK

Unit 902, 9th Floor
GPF Witthayu Tower B
93/1 Wireless Road
Patumwan, Bangkok 10330
T: +66 2665 7800

DUBAI

Office 1503, Level 15, Tower 2
Al Fattan Currency House
PO Box 506896 Dubai
T: +971 4 278 2300

FRANKFURT

Ulmenstraβe 37-39
60325 Frankfurt am Main
T: +49 69 297 291 0

HAMBURG

Jungfernstieg 51
20354 Hamburg
T: +49 40 800 084 0

HONG KONG

Units 1703-1707, One Pacific Place
88 Queensway, Hong Kong
T: +852 2168 6700

LONDON

15 Appold Street
London EC2A 2HB
T: +44 20 7814 8000

MADRID

C/ María de Molina, 4
28006 Madrid
T: +34 91 515 6300

MILAN

Piazza del Carmine 4
20121 Milan
T: +39 02 721 7071

MUNICH

Gewürzmühlstraβe 11 – Courtyard
80538 Munich
T: +49 89 237 086 0

NEW YORK

1133 Avenue of the Americas
New York, New York 10036
T: +1 212 922 2200

PARIS

26 avenue des Champs-Elysées
75008 Paris
T: +33 1 56 88 21 21

ROME

Piazza Navona 49
00186 Rome

T: +39 06 684 0581

SINGAPORE

6 Battery Road #28-00
Singapore 049909
T: +65 6532 5335

© Watson Farley & Williams 2015

ATHENS BANGKOK DUBAI FRANKFURT HAMBURG HONG KONG LONDON
MADRID MILAN MUNICH NEW YORK PARIS ROME SINGAPORE

All references to ‘Watson Farley & Williams’ and ‘the firm’ in this presentation mean Watson Farley & Williams LLP and/or its Affiliated Undertakings. Any reference to a ‘partner’ means a member of Watson Farley & Williams LLP, or a member or partner in an WFW Affiliated Entities, or an employee or consultant with equivalent standing and qualification. This presentation constitutes attorney advertising.

© Watson, Farley & Williams 2015

wfw.com