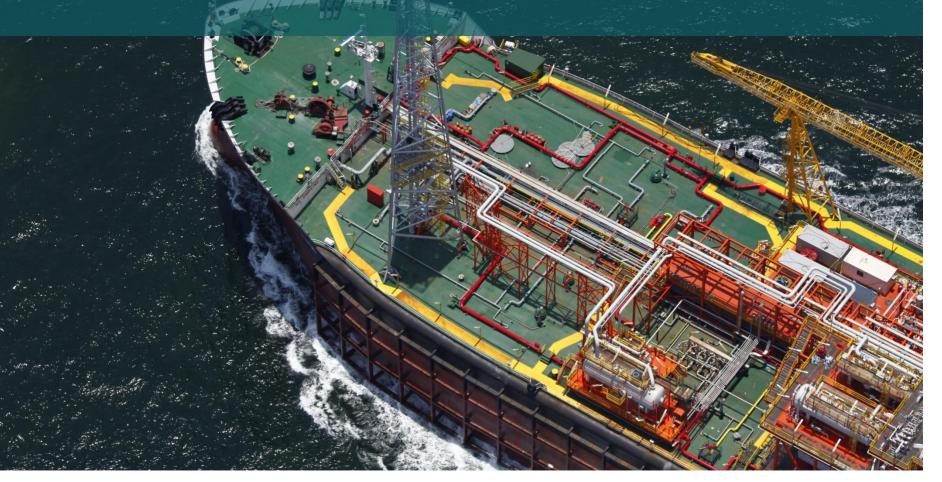
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Factors driving decision to sell/buy

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

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/nonperforming 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)

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)

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)

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?



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

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