

SECURITISATION SOLUTIONS FOR THE MARITIME INDUSTRY

By Nicholas Curmi, Ganado Advocates

The shipping sector appears to be slowly emerging from its negative cycle, with Moody's changing its outlook on the global shipping industry to stable earlier this year, driven primarily by positive developments in the dry bulk and container ship market segments. Still, traditional sources of ship finance that had previously dried up are unlikely to re-emerge in a hurry. Bank lending to the shipping companies has decreased in recent years in response to increased regulatory capital requirements and a more conservative approach to risk.

The capital markets can provide a valuable alternative source of funding, but this requires a change in mindset for shipping companies that have to date always relied on their bankers for funding, although this should not be much of an obstacle in practice, given that institutional investors typically have many of the same investment or credit criteria as conventional lenders.

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owners, but it should be as it can provide an effective means of raising additional finance (or refinancing existing bank debt) at a time where bank lending has disappeared or has simply become too expensive. Securitisation transactions are undertaken through 'Special Purpose Vehicles' (or 'SPVs'), entities that are set up for the sole purpose of issuing securities to fund the acquisition of partic-

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ular assets. These assets are segregated within the SPV for the benefit of investors, with the proceeds generated by the assets used to fund the return on the securities issued. It is a valid means of financing wherever cash-producing assets are involved – assets such as ships and charter party (lease) receivables, for example.

SPVs have been present in Maltese legislation in the ship-

ping context for some time in the form of shipping organisations established under the Merchant Shipping (Shipping Organisations – Private Companies) Regulations. Just like securitisation vehicles, shipping organisations must be established with limited objects – essentially, the ownership and operation of ships and certain ancillary activities, including the raising of finance (through

the issuance of securities or otherwise).

As with any financing, lender security and comfort are essential. Malta's creditor friendly shipping regime (established principally under the Merchant Shipping Act) was drafted with the protection of the mortgagee (traditionally, the financing bank) in mind as the main creditor of the shipping company. It is well known,

tried and tested and offers — among other benefits — ease, efficiency and certainty of enforcement by the mortgagee in the event of a default (including a recently introduced ability to enforce on and dispose of a vessel through a private sale without court intervention) and an automatic stay on insolvency proceedings of the entity pending outcome of enforcement proceedings on the vessel. The vessel owned by the SPV also forms a distinct patrimony within the assets of the entity that is generally available to satisfy only the priority claims of the mortgagee ahead of all other creditors. These benefits can be utilised by any mortgagee (including a security trustee acting on behalf of investors) irrespective of the type of financing provided by that mortgagee.

Malta's securitisation framework was similarly designed to benefit a securitisation vehicle's main creditor (i.e. the investor/s in the securities issued by the vehicle), providing legal certainty on all fundamental issues with which institutional investors in the

capital markets are typically concerned. Some of the key advantages of using an SPV established under Malta's Securitisation Act include statutory bankruptcy remoteness from the originator and true sale of the securitisation assets, a first ranking privilege over the securitisation assets in favour of investors, and the ability to vest in the investors (through a security trustee) the exclusive right to commence insolvency proceedings in relation to the SPV.

While the benefits of Securitisation Act apply to any asset class, it can be coupled with Malta's shipping framework and established legal precedent in shipping matters to create an

extremely attractive structure for securitisations backed by shipping assets, one that was first used in the recent UASC 'Enhanced Maritime Trust Certificates' issuance, a transaction which involved the securitisation of ultra-large container vessels and their bareboat charter party receivables, and won Marine Money magazine's structured finance and innovation deal of the year award. Malta was selected from a number of jurisdictions as the domicile for ship-owning SPVs for a very particular reason: each SPV could uniquely be established both as a shipping organisation subject to the Malta's shipping legislation and as a securitisation vehicle under the Securitisation Act, benefit-

ting from the vast array of creditor friendly provisions of both regimes.

Malta is the only jurisdiction that can provide such a robust financing structure (in terms of legal certainty) for maritime assets, and those shipping groups that may be looking toward the capital markets would do well to consider securitisation as a potential option. It is a financing tool that is equally valuable to those with a greater need for immediate funding as it is for those looking to set up a solid funding base and development plan for the longer term.



Dr Nicholas Curmi is a Senior Associate within GANADO Advocates' capital markets practice, where he regularly represents originators, arrangers, investors and trustees in securitisation transactions involving a variety of asset classes, and has advised on a number of innovative deals that have made use of the unique benefits offered by Maltese securitisation vehicles. He is a member of the Malta Stock Exchange's External Advisory Board, and is admitted to practise law in Malta and New York. Nicholas was also Co-Chair of the 2017 Malta EU Council Presidency Working Party on the new EU 'STS Securitisation Regulation' and was responsible for leading the technical negotiations on behalf of the EU Council. ncurmi@ganadoadvocates.com

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