Why directors need to take cover against complaints

Julian Macqueen

THE credit crunch and global downturn have put company balance sheets under pressure. In the shipping industry, there is the added stress of the huge orderbook, which is set to keep freight rates in the doldrums for the foreseeable future.

While companies will do their very best to generate as good a result as they can under tough market conditions, others might take issue with how the company is handling the downturn. One of those 'others' could be shareholders, aggrieved at a poor performance.

In the current climate, businesses should make sure they are covered, warns the International Transport Intermediaries Club, which provides cover for company directors.

"Companies operating in the shipping sector should be checking their directors and officers insurance cover in the light of their continued and increased exposure in the current difficult financial climate to liability claims from a variety of interests," said the club.

As well as shareholders, claims could emanate from employees, regulatory authorities and associated companies.

In one instance cited by the club in its newsletter The Wire, the board of a shipmanagement company received, individually, a claim from shareholders alleging that one or more of the directors were in breach of their duty to act in the best interests of the company "in failing to ensure that the company had a reasonably comprehensive liability insurance programme in place to protect its assets".

In another incident, by not declaring certain information at renewal (due to an oversight on the company's behalf), the company's employment liability underwriters declined to pay compensation to the family of an employee who had been killed in a car crash while on business. A separate case involving the same shipmanagement company saw no payment for fire damage at one of the company's offices as the insurer had gone bankrupt. According to ITIC, both claims put a hole in the company's balance of close to $1m.

In a separate case, the director on the board of the company who was responsible for risk management received a claim in person from the company shareholders. This was eventually settled out of court.

ITIC communications director Adam Jacobson said such claims often follow in the wake of poorer-than-expected financial performance. It is something that companies should look out for, he said.

Those in the shipping industry without D&O cover "will be especially exposed to liability if they do not have the proper insurance protection", Mr Jacobson added.

D&O cover provides financial protection for the directors and officers of a company if they are sued in relation to the performance of their corporate duties. ITIC's D&O policy protects individual directors from claims made against them in person, as well as the company which has to indemnify them.

Shipping debt heads East

Asian banks are starting to lend to foreign shipowners, a trend that is consistent with the shift of shipping to the region

In focus: Japanese banks, in particular, took an increasing share of syndicated lending to shipping in 2009. Bloomberg

Steve Matthews

IT HAS been well documented that many, though by no means all, traditional shipping banks have become severely restricted in their ability to agree new loans for shipping companies and vessel financing.

This has affected fundraising for investments in new ships, secondhand acquisitions and general corporate investment and re-financing. It is one of the reasons why there has been a recent surge in shipping company bond issues, which offers an alternative source of finance.

There is little sign of most troubled banks being able to resume normal lending any time soon, even if shipping market prospects were more favourable. But the banking crisis is primarily affecting banks in Western countries, where most international shipping banks are based. Some owners are turning to generally less financially challenged Asian banks as potential sources of debt finance.

Asian banks have performed a relatively limited role in providing debt finance for shipping and most have traditionally confined their activity to domestic or regional shipping companies. But as the banking crisis unfolded leading shipbuilding countries turned to domestic banks to extend finance for shipping as a way of supporting their domestic shipbuilding industries.

In addition some other Asian banks, especially in China, have begun to step up their lending activity to shipping companies on a more international basis. This prompts the question as to whether this development represents a temporary fix for the shortage of debt finance for shipping from traditional sources or whether it marks a more decisive and long-term shift of shipping debt finance towards Asia?

So far there is evidence from individual deals that more activity is taking place involving Asian banks and anecdotal reports suggest that this change is happening and likely to continue.

The latest statistics for syndicated lending to shipping for 2009 certainly indicate increased participation by Asian banks. In particular Japanese bank Mitsubishi UFJ Financial Group headed the rankings of bookrunners and mandated lead arrangers.

Two other Japanese banks also featured in the top 10, Sumitomo Mitsui Banking Group and Mizuho. However, the overall drop in syndicated lending to shipping last year and limited activity by some Western banks means it could be early to read too much into the 2009 figures.

Some recent loan deals involving Asian banks, including some for Western shipowners, have caught the eye in highlighting their increased volume and scope of business.

Danish owner Torm recently clinched two loan deals from China to finance newbuilding product tankers in Chinese yards. A $170m deal involved funding from China Export Import Bank, which followed shortly after a $167m deal with Bank of China, together with Société Générale in France. The latter involved for the first time an export credit from Chinese export credit finance provider China Export & Credit Insurance Corp (Sinosure).

Torm secured a credit facility worth $500m with Cexim Bank last year. This deal is also significant in that it shows increasing involvement of Chinese banks in directly lending to foreign shipowners to finance deals, rather than just providing guarantees or shipyard finance.

Another notable feature is the joint involvement of a Chinese bank with a Western shipping bank. Some bankers believe that such east-west partnerships in shipping deals could become more common as a way of easing Asian banks into greater involvement in shipping by pairing their finance capacity with the shipping finance experience of western banks.

This apparently growing lending activity by Chinese banks in particular is partly driven by Chinese government encouragement to support vital export industries such as shipbuilding. So far Chinese banks' participation in financing foreign shipping companies' investments has been limited to orders placed in Chinese yards. International and Commercial Bank of China has been involved as lead arranger in financing orders for containerships by Seaspan and CMA CGM.

Bank of China has been involved in a number of other recent deals including a $180m facility for STX Pan Ocean and $150m for Schulte Group to finance newbuildings at Chinese yards.

Some Japanese banks that traditionally mainly finance domestic owners have stepped up their international activity, mostly elsewhere in Asia. Sumitomo Mitsui has expanded its ship finance activity outside Japan, opening a shipping desk in Singapore in 2007 and increasing its presence in China. It also has shipping desks in South Korea, Europe and the US. Japanese owners account for about half its shipping portfolio.

Banks in other Asian countries, such as India and Taiwan, have also concluded recent shipping deals but for domestic shipowners. Singapore-based banks, such as DBS Bank, Overseas Commercial Bank of China and Overseas United Bank do participate in shipping deals but so far their activity tends to be based in South-east Asia.

South Korea has also sought to support its shipbuilding and shipping industries with government-backed finance and guarantees but Korean banks have had limited capacity to lend directly. Korean Development Bank, Korea Export Insurance Corp and Korea Export Import Bank have been the main vehicles for providing finance for newbuildings. Last year, KDB set up a $1.6bn facility for shipping investment contributing a share of loan deals, supporting other overseas finance providers. One recent deal has involved KDB and Bank of Nova Scotia providing loan finance for Korea Lines to acquire a capesize bulk carrier. KDB also led two syndicated deals to finance liquefied natural gas carriers for South Korean owners. These deals also involved several other Asian and western shipping banks.

Export credit agencies, such as Cexim, Kexim, KEIC and Japan Bank for International Co-operation have been active in filling some of the shortfall created by the lack of capacity in Western shipping banks. Last year, Cexim provided a $389m facility to US owner Overseas Shipholding Group, the first time it has provided a loan for a US shipowner. It has also been involved in arranging $118m for A P Moller Singapore and $146m for Frontline to buy two VLCCs.

JBIC provided ¥10bn ($111.5m) in export credit to support Turkish shipowners finance newbuilding orders at Japanese yards. This included providing some $109m for Turkish owner Yasa to acquire supramax bulk carriers.

Of course, export credit agencies in major shipbuilding countries have been providing export credit for ships for many years. Between 2002 and 2008, Kexim and KEIC provided more than $40bn to support shipbuilding contracts in South Korea. What has changed recently is the increased level at which it is being taken up by corporate shipowners in developed countries to help fill the debt finance gap.

Speaking at the recent Annual Ship Finance Asia conference in Singapore, Dimitris Belbas, managing director of Seafin in Singapore, part of the Eurofin Group, estimated that some $7.6bn will be provided this year by Kexim and KEIC to finance newbuildings at South Korean shipyards.

Export credit agency finance is attractive as it is relatively low cost compared with other non-banking alternatives, though there are often some restrictions on loan ratios and in relation to domestic content of newbuildings, for example. Usually, export credit agencies provide loans and guarantees in partnership with commercial banks. The increased involvement of export credit agencies in ship finance is set to continue for some time.

Opinion on the likelihood of greater involvement by commercial banks in Asia in shipping finance is mostly cautious, but is attracting much attention. HSH Nordbank senior economist in Singapore Matthias Umlauf told Lloyd's List: "This subject is flavour of the month at the moment here in Asia."

One leading Asia-based bank that is increasing its ship finance activity is Standard Chartered. Head of shipping finance Nigel Anton said: "Standard Chartered is relatively new to shipping finance and our clients are mainly based in Asia. If you are open for business, as we are, it could be a good year, especially in Asia. We mainly deal with existing clients for shipping, often existing clients from other business sectors."

Mr Anton said that there were many shipping companies in Asia that offered good investment opportunities.

Peter Illingworth, formerly head of ship finance for DVB Bank in London and now based in Singapore at DVB Group Merchant Bank (Asia) told Lloyd's List: "Asian shipping banks have been generally less affected by the credit crunch than their Western counterparts. They had limited mortgage securities exposure, the local economic shock was short lived, and there have been no major bailouts."

But Asian banks tend to have a domestic or regional focus and have a relatively limited role in global ship finance, so they are not going to replace the big European players yet. The exceptions are the Asian export credit agencies, which have really increased volumes to support local shipbuilding and its international buyers.

"What everyone is watching now is the effect of China's attempt to put the brakes on its banks. Shipping needs their extra capacity. I am convinced that China will become increasingly prominent in shipping finance over the next few years," Mr Illingworth said.

Mr Umlauf said that it was difficult to obtain detailed figures about Asian banks' shipping portfolios.

He said that "overall Asian banks are still heavily underrepresented in shipping finance, given that about 35% of the global fleet is Asian controlled. Chinese, Korean and Japanese banks tend to lend as corporate facilities. Export credit agencies and development banks' involvement is set to rise. ICBC, BoC and Cexim are major players in a strongly growing Chinese market."

Mr Belbas said that Bank of China has estimated that the total ship finance portfolio of Chinese banks, including all forms of finance including export credits could be as much as $88-102bn. About 75% of this is accounted for by the three leading ship finance banks in China, Cexim, ICBC and Bank of China. He pointed out that the growing strength of Chinese banks is demonstrated by the fact that the top three global banks by market capitalisation are now Chinese banks – ICBC, China Construction Bank and Bank of China. Chinese banks are currently recession proof. They are using their resources to support Chinese shipping companies and shipbuilders.

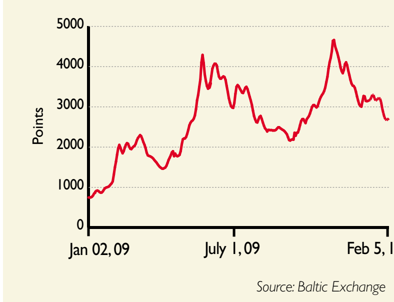
Despite its problems back home, Mr Umlauf said that HSH Nordbank's Asian shipping portfolio was performing reasonably well because it was more weighted towards bulk carriers than the European portfolio, which focused on containerships. "HSH is still committed to Asian business, which we think has good prospects," he said.

Asian banks, particularly Chinese banks have increased their ship finance activity including for foreign owners. In the overall scheme of things their participation is still limited. Traditional Western shipping banks still provide the large majority of shipping debt and will continue to do so, even if some remain limited in their capacity to increase activity and demand more restrictive covenants and higher pricing. But there is a discernible trend towards increased involvement by Asian banks, both state-backed and commercial, reflecting the well-established shift in the centre of gravity of shipping to that region. That movement is likely to carry on although it may be a gradual process rather than any dramatic switch.

$7.6bn

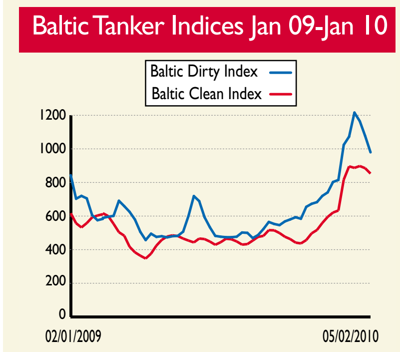
Estimated amount Kexim and KEIC will provide this year to finance newbuildings at South Korean yards

Baltic Dry Index Jan 09-Feb 10



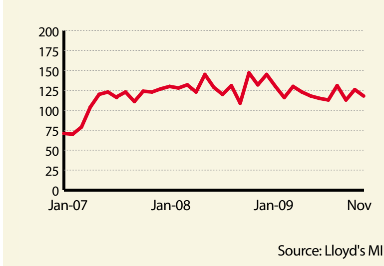
Source: Baltic Exchange

Baltic Tanker Indices Jan 09-Jan 10



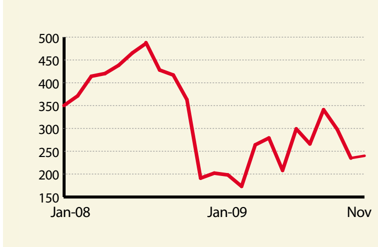
Source: Baltic Exchange

Black Sea containership sailings Jan 07-Nov 09



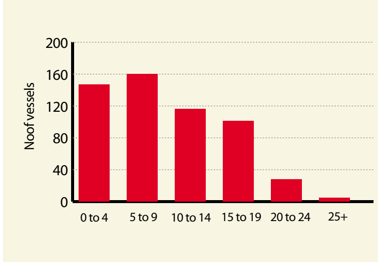
Source: Lloyd's MIU

Brazil iron ore sailings Jan 08-Nov 09



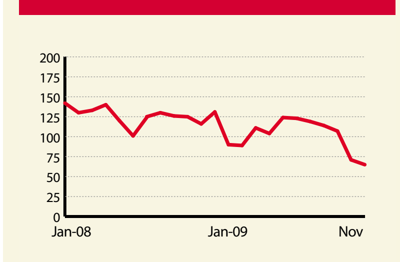
Source: Lloyd's MIU

VLCC fleet age profile



Source: Lloyd's MIU

US Atlantic ro-ro sailings Jan 08- Nov 09



Source: Lloyd's MIU

SHIPPING economist

Shipping Economics appears every Thursday, edited by Steve Matthews and Julian Macqueen
www.shipecon.com
www.lloydslist.com/shipfinance