STEPHENSON HARWOOD

MARINE MONEY LONDON SHIP FINANCE FORUM
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ECA Comfort for Lenders Case Study: The first Sinosure pay-out in shipping history

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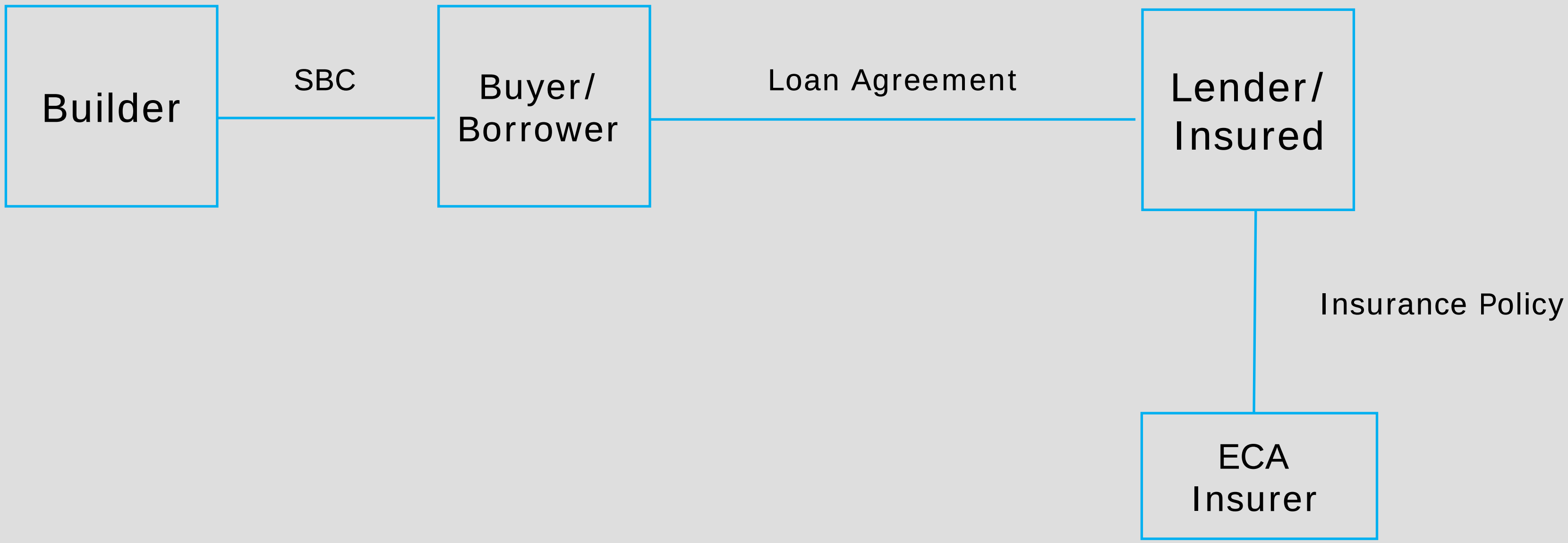
1 Introduction

- Background: the Sinosure Policy
- Background: to our transaction
- What went wrong
- Sinosure documentation
- Implementation of the structure
- Lessons learned and conclusions

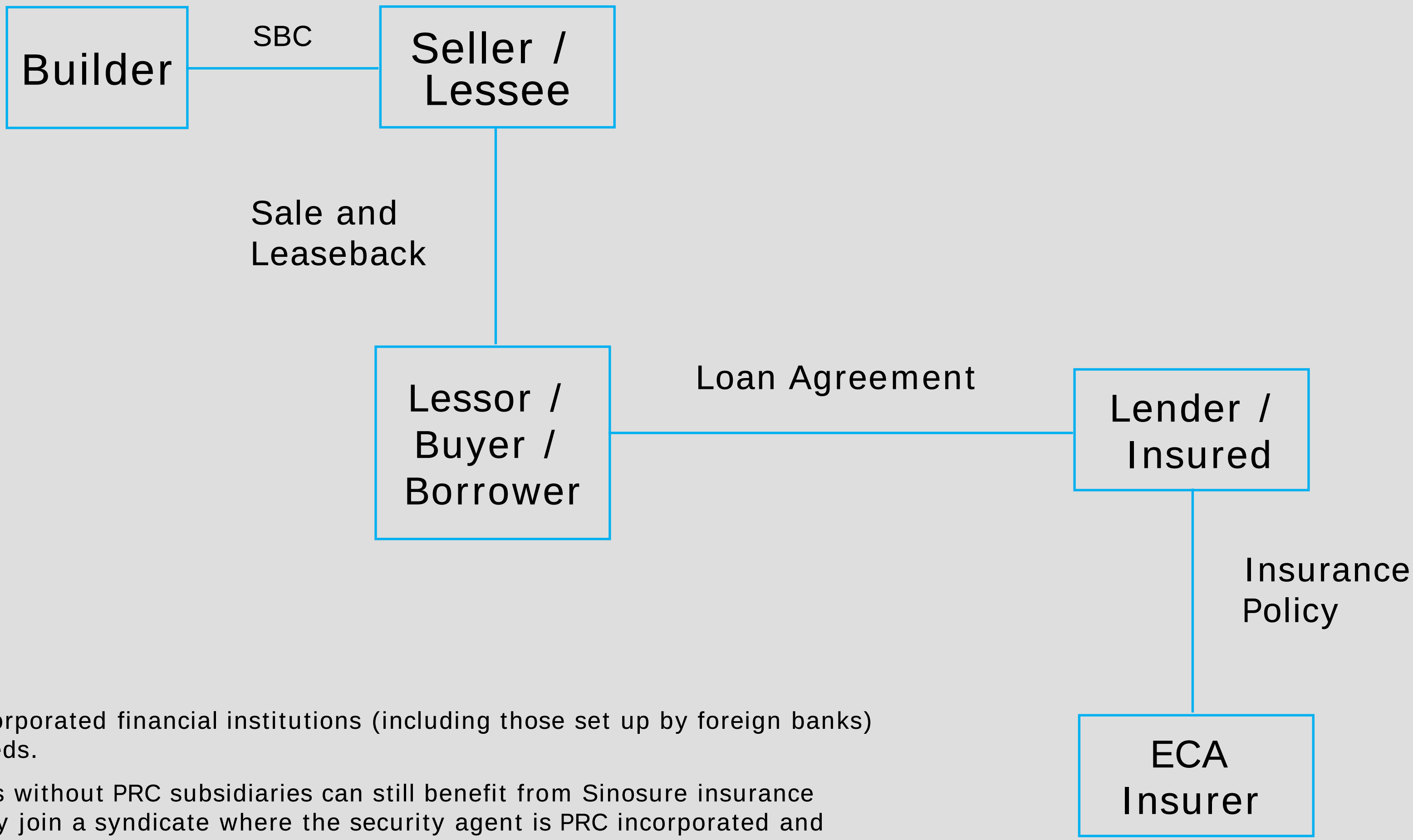
2 Background to Sinosure

- Established 2001: China Export & Credit Insurance Corporation (Sinosure)
- Export credit insurance
- Eligibility:
  - Chinese financial institutions or
  - Foreign financial institutions having branches in China, assets of not less than US$20bn, involved in export credit transactions
  - Loan in excess of US$1m; 1-10 years
- Buyer's credit insurance
  - Borrower or guarantor defaults under credit agreement due to certain political and commercial risks
- Lease insurance
  - Lessee default under lease agreement due to certain political or commercial risks

Sinosure – Buyer's Credit Policy Structure



Sinosure – Lease Policy Structure



Notes

- Only PRC incorporated financial institutions (including those set up by foreign banks) can be assureds.
- Foreign banks without PRC subsidiaries can still benefit from Sinosure insurance policies if they join a syndicate where the security agent is PRC incorporated and holds the policy for the benefit of the syndicate members.

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General Policy Issues

- Insured = the Lender
- Lump sum premium paid prior to policy commencement
- Termination Value / principal and interest
- Possible deductibles
- Maximum Insured Amount - 95%
- Duration - term of loan
- Premium - varies

General Terms and Conditions

- Risks Covered: Lease Policy
  - Local currency conversion restrictions
    - prohibition or restriction on Insured or Lessee converting local currency to pay rentals or the Termination Value
  - Expropriation
    - nationalisation, confiscation of leased property leading to non-payment of rentals or Termination Value
  - War and political disturbance
  - Breach of contract by Lessee
    - insolvency
    - failure to pay rentals or Termination Value
    - other Termination Events under the Lease

General Terms and Conditions

- Risks Covered: Buyer's Credit Policy
  - Business events
    - Borrower insolvency
    - Failure to pay principal / interest
  - Political events
    - Restriction on payment in Borrower's jurisdiction
    - Government imposed moratoria
    - War/terrorist act

General Terms and Conditions

- Exclusions
  - failure of Insured to obtain relevant approvals
  - violation of Insured of terms of policy
  - losses arising by continuation of the lease after the date the causes of loss were known to the Insured
  - losses covered by guarantees or insurance
  - incidental losses
  - breach of law, default, fraud
  - currency fluctuations
- Representations
  - to pay premium
  - to provide correct information

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General Terms and Conditions

- Insured Covenants
  - not to amend lease
  - not to assign Policy
  - not to damage Insured's rights under Policy
  - to comply with regulations, law etc.
  - to provide information
  - to cooperate with Insurer
  - to enforce Security Interests

Determination of a Claim

- Insurer makes a determination of a Claim within 60 days after receipt of 'final information'
- Pays out within 30 days
- Pay Rentals or Termination Value
  - no default interest
  - pay Termination Value by instalments or lump sum
- Pay principal
- Compensation = 95%

Assignment

Once the Insurer has paid compensation to Insured then Insured must assign all rights and benefits under Loan Agreement and Security Documents if requested by Sinosure

- However Insured may be asked to enforce
- Recoveries under Finance Documents split (5%) Insured, Sinosure (95%) after Sinosure has paid 95% compensation
- Recovery costs split 5:95

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Other Points

- PRC law
- Duty of disclosure
- Impact on the Documents?
- Policy in a form acceptable to the Lenders
- Policy is a condition precedent
  - premium paid
  - policy in full force and effect
  - PRC legal opinion
- Policy is part of Trust Property
- Special Terms & Conditions = amendments to GTC
- Working Period - before paid out - 90 to 180 days

3 Background to Transaction

- Chinese Bank facility
- 2 vessels
- Borrowers/owners
- Bareboat charters (in shipowners' group)
- Sinosure backed facility - lease policy linked to the BBCs
- Standard security package, including insurance assignments from owners and charterers

4 What Went Wrong

- The market! Reduced charter payments
- Vessel grounding
- Inability of borrowers to meet repayment obligations (even interest)
- Attempt of consensual restructuring, but borrowers failed to pay fees and revised payments
- Bank considered acceleration and enforcement options **AND SIMULTANEOUSLY** claimed under Sinosure policy

5 Sinosure Documentation

- The policy is not a clear and consistent document (particularly the translation) - challenging
- Particular challenge to identify:
  - what is recoverable
  - what exactly triggers the policy
- Sinosure's counsel originally challenged the "passing through" of payments and recoverable amounts

5 Sinosure Documentation

- The proposed structures:
  1. assignment and trust (Bank holding security for the benefit of itself and Sinosure)
  2. partial assignments (and no trust)
  3. total assignment (and no trust)
  4. total assignment and trust (Sinosure holding security for the benefit of itself and the Bank)
- Option 3 was chosen

6 Implementation of the Structure

- Assignment, not novation
- Assignment of indebtedness AND rights in security documents
- Transfer of vessel mortgages
- Notices
  - security parties
  - insurers
  - charterer
- At the same time acceleration and demands under the guarantees

6 Implementation of the Structure

- Compensation ratio and formula and total assignment meant that the Bank assigned all rights without receiving anything in exchange for some time
- Eventually compensation on a repayment instalment by repayment instalment basis
- Continuing co-operation by the Bank required (particularly re: vessel total loss)
- Mechanism in documents re: payment to the Bank of any excess amounts received by Sinosure
- What is recoverable under policy was key in this context, e.g. legal costs

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7 Lessons Learned and Conclusions

- It works!
- A good outcome for the Bank and Sinosure and in the end relatively fine for the shipowners
- It takes time! N.B. Sinosure policy documents
- Creativity in finding solutions to facilitate the Bank's objectives without the shipowners' co-operation
- Would we have the same result/pay-out if the lender was not a PRC entity?
- Legal costs