

► This is not always possible.

Norton Rose partner Alistair Macrae says: "It is likely many lessees will simply be unable to comply with these requirements, so deals will either go into default or require restructuring."

Court action has already started in the US on this point, and considering a lot of securities issues arise in lease deals involving European lessees, it won't be long before a flood of such cases reach English law firms.

The spiralling number of customer insolvencies will mean European lessors will have to pay careful attention to governing laws on rights of title owners in cases of default, relief from forfeiture, title to recover, and so on.

All this could lead to any of the following: renegotiation of terms, debt rescheduling, invoking of over-riding principles, asset returns, lease terminations, a restructuring of the way lessors access funds, and many others.

Meanwhile, lawyers expect a Europe-wide increase in regulation to hit the asset finance industry. In England, for instance, the risk management arm of the Financial Services Authority is expected to look closely at asset finance during 2009.

Also, on the back of the 2007 case *Wilson vs Hurstanger*, in which a lender was held to be liable for a broker's fiduciary duty (for failing to disclose the correct value of his commission), lawyers predict greater oversight of lessor-intermediary relations.

Brendan Malkin ■

Lease technology: from disaster comes opportunity

Companies developing software systems for the leasing sector will have a challenging year ahead – but opportunities will arise.

The credit crisis is likely to give

rise to some consolidation. Companies specialising in front-office are expected to team up with back-office specialists. Also, as it becomes tougher for lessors to source new business, there will be a greater emphasis on collection management.

As insolvencies increase in number, companies offering back-office administration are likely to boost operations. LPM Outsourcing, for example, recently decided to bolster its levels of 'run-out' activities. This involves company administrators outsourcing to LPM the running of the insolvent lessee's lease book. LPM has recently recruited extra staff, as it expects operations to grow to levels it saw in the early 1990s, the last UK recession.

Meanwhile, as business levels drop-off and lessors scramble around for less business, lenders will need to make faster credit decisions to stay ahead of competition. Volvo FS in France is a recent example, and others are expected to follow suit. The captive recently installed SysperTec's technology that enables automation of credit acceptance. This allows dealers to determine the creditworthiness of a client without waiting for head office approval. This reduces processing time to as little as one minute.

Also, as leasing companies take on more 'green projects', software companies are likely to follow suit. NetSol Technologies has been quick off the mark, launching in December a software tool to manage "green power purchase agreements" for "environmentally fit companies".

Antonio Fabrizio ■

Lease tax and accountancy: just got harder

Lease tax and accountancy in 2009 is set to be more complicated than ever. Lessors will have to juggle getting relief for capital expenditures, dealing with foreign currency leases, handling novel types of residual value, and lease classification.

However, experts say the anti-avoidance legislation, Schedule

10, will be the most important accounting issue for UK leasing and asset finance companies.

This legislation aims to deter lessors from selling a company to take advantage of tax depreciation benefits. While there is clearly a need for anti-avoidance legislation in the UK, the far-reaching measures in Schedule 10 impose an unfair burden on lessors trying to sell a company honestly. Inevitably, this issue will need review.

End-user accounting issues will also be high on lessors' agendas. The revision of IAS 17, which sets how an asset is registered on a balance sheet, has huge implications for leasing companies.

Jason T Hesse ■

New forms of financing: time to take risks

With lowering liquidity in the finance industry, competition among lessors for traditional business lines can only become more intense in 2009. While many leasing companies are retreating to core assets and traditional lease products, many options exist for innovative lessors with the resources to branch into new forms of financing.

One option is invoice discounting, a product which sits well alongside fixed asset financing, according to Asset Based Finance Association CEO Kate Sharp. Sharp adds that invoice discounting is legally straightforward and provides a high rate of recovery in the event of client failure.

Another exotic, and potentially rewarding, financing option is turnaround finance, which involves financing of businesses threatened with insolvency. Libby Aird-Brown, of turnaround specialist TPM, said that while this market was expanding, "turnaround finance can be a risky business" and "those who will succeed are those who bring many experience with them".

On a less risky note, finance providers in the UK may wish to participate in the government's Small Business Finance and Small Firms Loans Guarantee schemes, comprising government/private joint ventures for provision of funds to SMEs.

Fred Crawley ■

