

# Building an automated leasing administration system – the legal issues

**Philip Venner** of Key Equipment Finance proposes a framework for multi-country lease documentation and administration

## The System

The diagram at the end of this article is a simple description of matters which need to be considered in an automated leasing administration system from customer relationship management through to the disposal of inventory which may be returned at the end of term. As the diagram shows, the system will need to cover the recording of customer information for deal approval and documentation generation, the administration of the deal during its term, together with end of term events.

## Financing Structures

In developing your system you will of course have to ensure that the financial products you provide are covered. These products are likely to be operating leases, finance leases, hire purchase agreements, conditional sale agreements, loan agreements and syndicated agreements.

## Lease Classification

The system will also require the accurate classification of the finance product when entered into the system. For instance,

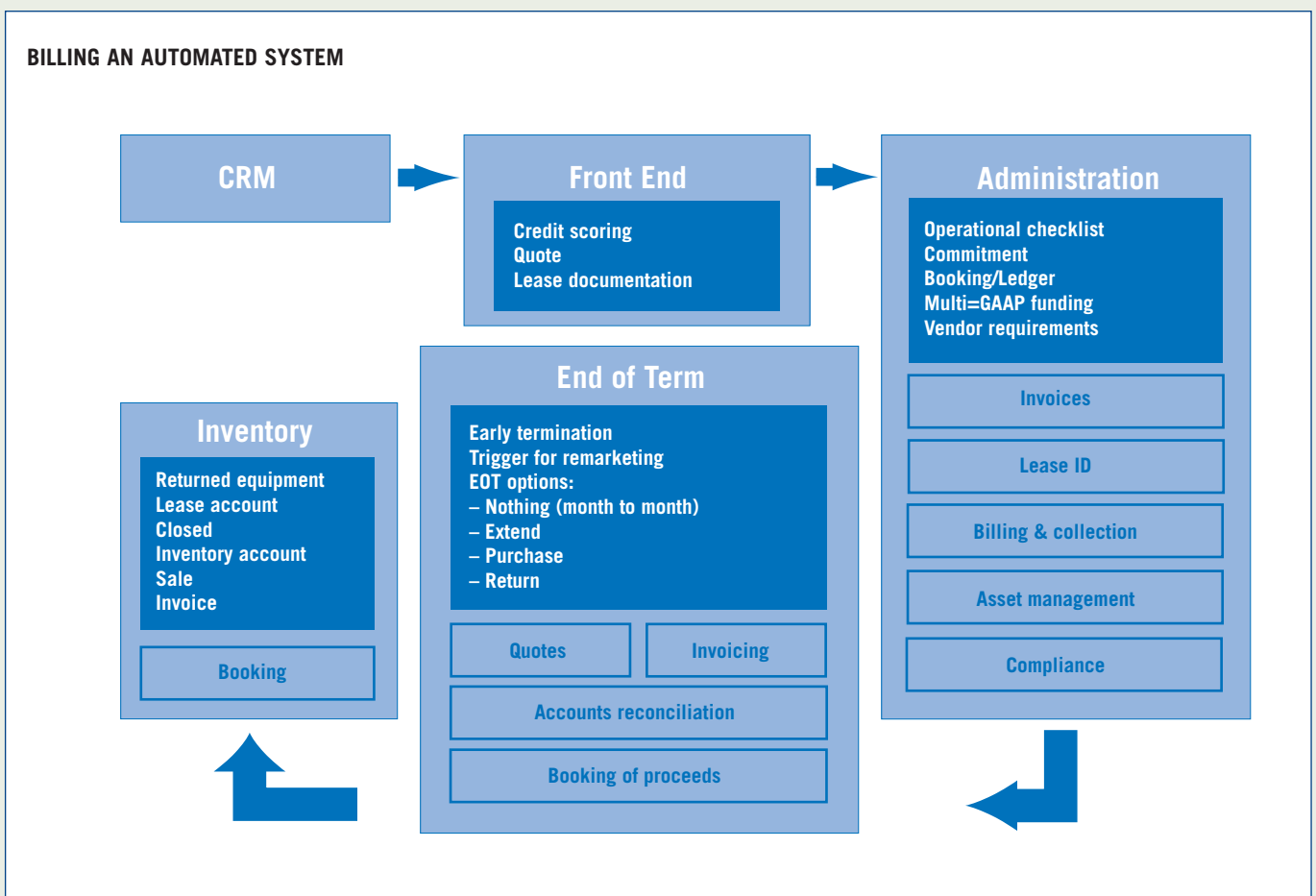
checking that a lease is either an operating or finance lease is an economic question whereas determining whether an agreement is a hire purchase agreement involves both an economic and legal analysis. You will also need to check whether there are any automatic restrictions on entering certain classifications of finance products due to regulatory issues in the country in which the offering is being made.

For instance, with reference to the financing structures mentioned above, in France only Contrats de Location (rental agreements) are permitted without a credit licence. In Germany loans would require a credit licence but not the other financing structures.

In Austria the case is that both loans and an assignment of receivables would require a credit licence and in the UK with the recent changes in the consumer credit legislation, your automated system should be able to distinguish between business to business transactions and business to consumer transactions regulated within the Consumer Credit Act.

## Asset Finance Documentation

You will no doubt have your templates for your asset finance



contracts which can be automatically generated from the system using information which has been collected within the CRM database. Accuracy of the customer's name and address will be important in ensuring that the credit approval and the asset finance contract relate to the correct party.

### Lease Commitment

The system should be able to tell you from data entered whether a lease has become binding and when the term commences. Any other contractual milestones such as rental payments, variable interest calculations, variable rentals should also be included.

### Confidentiality

You must ensure that the system is secure with regard to confidential information relating to customers, employees, contractors and with regard to customer self-service. Therefore your IT security should be clear with regard to levels of authorisation and password protection to make those authorisations.

### Data Protection

Similar to the issue of confidentiality, any data (such as personal data) which needs to be protected by the law of the country in which you make your finance offering must be covered. In certain countries such as Italy and Switzerland corporate data as well as personal data is regulated. As a reminder the 8 data protection principles under the European Data Protection Directive which need to be complied with by your system are as follows:-

Data must be

- fairly and lawfully used;
- used for limited purposes i.e. for the particular business need in question;
- adequate, relevant and not excessive;
- accurate;
- not kept longer than necessary;
- used only in accordance with the data subject's rights;
- secure; and
- not transferred to countries outside the EU, other than EU approved territories

### Money Laundering

Pursuant to the 3 EU directives as enacted by national legislation you need to ensure that you have the appropriate checks required by law and consider whether these can be included within an automated system. The basic matters with which one should have regard are as follows:

- money laundering officer;

- ID checks;
- ongoing due diligence;
- risk based approach;
- government embargos;
- politically exposed persons; and
- banking regulations.

### Fraud

You should consider introducing checks into the automated system that throw up additional requirements for authorisation for transactions which lend themselves more favourably to fraud such as sale and leaseback transactions and transactions introduced by intermediaries.

On a related subject for US subsidiary companies contracting finance transactions, they will probably want to include checks in the system for the purposes of Sarbanes Oxley. Indeed it appears that there is now software available for the purposes of making checks for Sarbanes Oxley.

### Liabilities for the Asset End of Term

At the end of term where equipment is likely to be returned to a lessor consideration should be made with respect to putting checks in the automated system with a view to ensuring that the terms and conditions of sale or the manner of sale of the equipment is controlled.

For instance, equipment should be generally sold on an "as is, where is" basis. In some cases with specialist equipment it is often recommended that the equipment is sold through a specialist equipment supplier or broker for second-hand equipment to ensure that any recourse from a customer on the sale of second-hand product would be with the supplier and not with the lessor.

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The above is an extract from a presentation given by Philip Venner (Vice President & European Legal Director Key Equipment Finance) at the seminar Best Practice in Leasing Operations on 21st June 2007 in Vienna.

Key Equipment Finance is a part of KeyCorp in the United States, a Fortune 500 diversified financial services company with assets of \$94 billion and active in 26 countries. Key Equipment Finance in Europe provides Bank, Vendor and Syndication facilities for IT technology, Pre-Press and Printing, Transportation, Healthcare and Medical and Construction.

*Note this extract is not intended to be definitive legal advice. Readers are advised to seek advice from their usual professional advisers on the issues raised.*