

## SECTION DD – EQUIPMENT LEASING

- (a) Equipment leasing is widely practiced in Malaysia as a financing technique.
- (b) If default occurs, the owner would have the right to re-possess the equipment in question and to sue for overdue lease payments.
- (c) If re-possession fails, court process would have to be resorted to enforce the right to possession and to recovery overdue instalments.
- (d) In practice the process of recovery is fraught with difficulties of a practical nature, especially with equipment that may be used in remote and inaccessible areas, and where the lessee physically resists attempts at recovery of the equipment, or where the licence to enter premises to re-take possession is effectively negated by physical resistance or where serial numbers are obliterated so as to make identification difficult or impossible.
- (e) As to whether the commencement of insolvency procedures has any effect on recovery of leased equipment:

**Special administration** [see section I below]– once it has commenced, rights of repossession are frozen by a moratorium for 1 year. The same effect applies to commencement of legal proceedings to enforce rights to retake possession.

**Receivership** – no effect because leased equipment would not form part of the assets under control of the receiver and if the lease has been determined for non-payment, the company's right to use of it ends.

**Liquidation** – once winding up commences, dispositions of property beneficially owned require validation by court but since the beneficial interest in leased equipment is in the lessor, technically it is not covered by the provision on invalid dispositions. However, where a winding up order has already been made, if court process is required to enforce possessory rights, the initiation of such process would require leave of court.

**Schemes of arrangement** – restraining orders that have been made by courts in Malaysia in 1998 have tended to restrain leasing creditors from retaking

equipment except with leave of court. There is considerable doubt as to whether there is jurisdiction to make orders at least to this extent.

- (f) It is usual in Malaysia for equipment leases to be supported by personal or other guarantees, and for provision to be made in equipment leases for penalty or default interest, and so forth.