



Question Q241

National Group: Hungary

Title: IP licensing and insolvency

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Date: 19 May, 2014

Questions

I. Current law and practice

Groups are invited to answer the following questions under their national laws. If both national and regional laws apply to a set of questions, please answer the questions separately for each set of laws.

Please number your answers with the same numbers used for the corresponding questions.

1) Does your country have a registration system for IP licenses? If yes, please describe this system.

Yes, Hungary has a registration system for IP licenses. The Hungarian Intellectual Property Office (HIPO) maintains the respective registries for registered industrial property rights (patents, SPCs, trademarks, designs, utility models, semiconductor chips) in which licenses may also be registered. (The geographical indication cannot be subject to licence to any third party.)

This registration system does not cover copyright and know-how licenses.

Although IP licenses may be registered, the registration is not a precondition to the existence and/or validity and or legal effect either regarding the relation between the licensor and the licensee or vis-à-vis third parties. Nevertheless, any right relating to an IP right subject to registration may only be claimed against a third party acting in good faith and acquiring any right for consideration, if it has been entered in the respective IP registry indicated above.

2) Describe the type or types of bankruptcy and insolvency proceedings that are available in your country.

The two main types of insolvency procedures in Hungary are (i) bankruptcy and (ii) liquidation procedures. Bankruptcy procedures are generally aimed at reorganization of the debtor whereby the court will grant a temporary moratorium for the debtor during which it shall attempt to reach a settlement with its creditors. If the

reorganization is successful and the claim of the creditors can be satisfied, the debtor may continue to operate. Liquidation procedures are aimed for the dissolution of the insolvent debtor as its debts exceed its assets. In the case of liquidation, all assets of the debtor are sold and the income deriving from this is divided among the creditors. The debtor shall be subsequently terminated. For the purpose of the present questionnaire only the rules of liquidation procedures – in conjunction with the provisions of the Civil Code and other laws where appropriate - will be examined in our below answers.

3) Does the law that governs bankruptcy and insolvency proceedings in your country address IP rights or IP licenses as distinct from other types of contracts, assets, and property rights? If yes, is the law statutory, regulatory, or based on precedent? Please identify any relevant statutes or regulations.

The law governing bankruptcy and insolvency proceedings does not address IP rights and IP licenses as distinct from other type of contracts, assets and property rights. Bankruptcy and insolvency proceedings are regulated by Act XLIX of 1991 on Bankruptcy Proceedings and Liquidation Proceedings ("Liquidation Act") which covers IP rights and IP licenses as part of the intangible (immaterial) assets subject to bankruptcy or liquidation.

4) Please answer the following sub-questions based upon the law and jurisprudence in your country that governs bankruptcy and insolvency proceedings:

a) Describe the law and its effects on a bankruptcy administrator's ability to adopt, assign, modify, or terminate an IP license.

In general, the bankruptcy administrator shall have powers to terminate, with immediate effect, the contracts concluded by the debtor, or to rescind from the contract if neither of the parties rendered any services. All claims of the other party arising from the termination shall also be reported to the bankruptcy administrator in the course of the liquidation procedure. Any creditor's claim may be enforced by notifying the bankruptcy administrator within 40 days from the date when the rescission or termination was communicated.

The bankruptcy administrator shall also collect the claims of the debtor when due, enforce his claims and sell his assets. If consented to by the creditors, the bankruptcy administrator may invest the debtor's assets into private limited-liability companies, limited companies or cooperatives societies as non-pecuniary assets (in-kind contribution) if it promises better results.

On the basis of the above, the bankruptcy administrator may either decide to sell or to invest as a piece of the assets the IP rights or licenses which are transferable, or to terminate the license agreements concluded by the licensor.

Should a licensee go under bankruptcy or liquidation, if the license is freely transferable the bankruptcy administrator may decide to sell such a license. If the license is not transferable, the bankruptcy administrator may only choose to terminate the license agreement when it deems that it is no longer necessary for the remaining operation of the debtor. (A special problem may arise if the book value of the asset (the license) is 0 due to the application of the amortization rules. In such a case the administrator may opt for the "do nothing" option, and the license may turn out at the end of the procedure as an "orphan" right.)

b) Are equitable or public policy considerations relevant to how an IP license is treated?

There are no equitable or public policy consideration to IP licences.

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In general, equitable or public policy considerations are underlying compulsory licences granted due to lack of exploitation, and compulsory licenses in respect of dependent patents. Moreover, HIPO shall grant a compulsory license for the exploitation of an invention in the cases laid down in Regulation (EC) No 816/2006 of the European Parliament and of the Council of 17 May 2007 on compulsory licensing of patents relating to the manufacture of pharmaceutical products for export to countries with public health problem. However, compulsory license may not be assigned or transferred to any other person, and the holder of a compulsory license may not grant a license of exploitation.

c) Is the law different for different types of bankruptcy and insolvency proceedings in your country?

The Liquidation Act governs the general rules of liquidation procedure. In addition, the same act contains special provisions relating to the liquidation of companies that enjoy a special status with respect to public strategic considerations (e.g. major electricity providers) as well as rules for the simplified dissolution of companies the liquidation of which cannot be performed based on the general rules in the absence of proper book keeping, documents, and/or a minimum level of assets. Regarding these procedures there are differences in the way the liquidated company's assets are sold, that is whether public auction is or not necessarily involved. However, the special provisions do not concern the bankruptcy administrator's rights regarding license agreements, or the rights of the parties of such agreements.

As member state of EU, Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings directly applies in Hungary. The regulation governs main and secondary insolvency proceedings regarding debtors who have establishment in a Member State other than the one in which their center of interest is. The Regulation, however, does not affect national law in the aspects of the questions dealt with in this questionnaire.

d) Does the law require, or give preference to, IP licenses that have been registered according to a registration scheme?

Registering IP licenses is not obligatory and in some cases not even possible (copyright, know-how). No preference is given in bankruptcy and insolvency proceedings to IP licenses registered according to a registration scheme. Any right relating to IP protection may be invoked against a third party who acquired his right in good faith and for a consideration only if it is recorded in the register. Consequently, registering IP licenses according to a registration scheme is important and advantageous, since the party acquiring the IP right in the course of the bankruptcy proceedings cannot argue that he/she did not have information about the IP license at the time of acquiring the IP right. This is important to avoid any eventual arguments of the new owner of the IP right that would challenge the existence of the IP license.

e) Would the existence of a pledge of or security interest in the IP rights for the benefit of the licensee affect application of the law in the case of an insolvent licensor?

It is possible to establish a pledge for the benefit of the licensee, if the licensor has any payment obligation towards the licensee (as under Hungarian law a pledge shall secure pecuniary debts). Future debts can be secured as well. However, the Hungarian Civil Code (both the former Civil Code and the new Civil Code, Act V of 2013, which is in force as of 15th March, 2014) deems null and void any agreement of the parties concluded before the due date of the debt according to which the creditor

(in this case the licensee) acquires the ownership of the subject matter of the pledge (in this case the IP right) when the debt is due.

As for rules regarding pledges in the Liquidation Act, the main principle is that all assets of the insolvent company shall be sold, including the ones that are pledged. Article 49/D ensures that the purchase price of the pledged asset shall be due to the pledgee (based on the priority arising from the pledge), with the deduction of certain costs, provided that the pledgee registers its claim in the liquidation proceeding in due time. In addition – should the purchase price of the asset not cover the debt - Article 57 states that the fulfilment of pledged debts shall occur after the fulfilment of the costs of the liquidation proceeding.

It is only under special circumstances that the pledgee may acquire the subject of the pledge under the Liquidation Act, that is if the sale of the pledged item was repeatedly unsuccessful. In this case, Articles 49/A(5) and 49/B(7) enable the bankruptcy administrator to sell the pledged asset directly to the pledgee.

f) Is the law limited to or applied differently among certain types of IP rights (e.g., patents versus trademarks or copyrights)? If yes, please explain.

The transferability of the IP right is the key issue in insolvency proceedings. Please find below a summary chart on IP rights and their transferability according to Hungarian law:

IP right or similar proprietary right	Economic rights are transferable	Economic rights are non-transferable
Copyright in general		x
Copyright pertaining to software, database as a copyright work (as an edited compilation), works ordered for advertisement purposes, synchronisation contracts (except for musical works), employees' work, collective work, related rights	x	
Trademark	x	
Geographical designation		X
Patent, SPC	x	
Design	x	
Topography of semiconductor chips	X	
Know how = protected knowledge	X	

As for those copyrights where the economic rights are non-transferable, the holders of such rights are the authors themselves (or their heirs) as private persons. Such rights may only be held by companies (i.e. economic entities which may be subject to an insolvency procedure) if they acquired them as employer from the author as employee on the basis of the Copyright Act, according to which - in the absence of any agreement to the contrary - the employer, as the legal successor to the author, obtains economic rights once a work is handed over if the preparation of the work was the author's obligation within the scope of his/her employment. The economic rights acquired on the basis of the above shall also be transferable to third parties. It should also be added that the transferability of an IP license shall also be considered separately. The parties shall agree in their license agreement (even in case of non-transferable IP rights) regarding the transferability of the license itself. Under the general rule laid down in all IP acts, no IP license is transferable unless the parties agree otherwise.

g) Does the law apply differently to sub-licenses versus "main" licenses?

There is no difference.

The licensee may transfer the license or grant sub-licenses to third parties only with the express consent of the rightholder.

h) Does the law apply differently to sole or exclusive licenses versus non-exclusive licenses?

There is no difference.

i) Does the law apply differently if the bankrupt party is the licensee versus the licensor?

There is no difference.

j) Please explain any other pertinent aspects of this law that have not been addressed in the sub-questions above.

N/a.

5) Would a choice of law provision in an IP license agreement be considered during a bankruptcy or insolvency proceeding in your country? Is this affected by the nationalities of the parties to the IP license or by the physical location of the assets involved?

No choice of law provision in an IP license agreement would be considered with regards to the application of the rules of bankruptcy and insolvency proceedings because the law regulating them qualifies as public law from which no deviation is possible. Such rule is unaffected by the nationalities of the parties to the IP license or by the physical location of the assets involved. However, a choice of law provision could be taken into consideration with respect of the transferability of the IP license itself during bankruptcy and insolvency proceedings.

6) Would a clause providing the solvent party in an IP license agreement the right to terminate or alter an IP license be considered enforceable during a bankruptcy or insolvency proceeding in your country? Would the answer be different if the clause provides for automatic termination as opposed to an optional right to terminate?

It is the opinion of the Hungarian Group that such clause would be enforceable, either in the case of the right of the solvent party to terminate or alter the license agreement or in the case of automatic termination. On the other hand, even if the solvent party would have the right to alter the licence agreement, under the Liquidation Act, the bankruptcy administrator has the right to terminate the licence agreement.

7) Would a clause in an IP license agreement that restricts or prohibits transfer or assignment of the IP license be considered enforceable during a bankruptcy or insolvency proceeding in your country?

Although the bankruptcy administrator is obliged by law to sell and realize the assets of the company under bankruptcy or insolvency proceeding (including the licensee's licences), the bankruptcy administrator cannot disregard the contractual clause which restricts or prohibits transfer or assignment of the IP license. It is the general rule, that the license can be transferred to third parties only with the express consent of the rightholder. Hence, in our view, such clause could be considered enforceable.

8) In the event of a transfer or assignment of an IP license resulting from a bankruptcy or insolvency proceeding, what are the rights and obligations between the

transferee and the remaining, original party or parties to the IP license? Does it matter if the insolvent party is a licensor, a licensee, or a sub-licensee?

In the event of a transfer or assignment of an IP license resulting from a bankruptcy or insolvency proceeding, if the licensee is bankrupt, rights and obligations under the licence agreement shall continue to be binding between the transferee and the IP owner. In most IP licence agreements, however, the bankruptcy or insolvency of the licensee triggers the possibility of termination. The same applies for sub-licensees.

Where the licensor (IP owner) goes bankrupt, and the licence is registered in the patent register, the new IP owner will be bound by the licence agreement. This is based on Section 54(4) of the Hungarian Patent Act, which sets forth that "any right relating to patent protection may be invoked against a third party who acquired his right in good faith and for a consideration if it is recorded in the Patent Register". Similar rules exist for trademarks, designs and utility models. Copyright is not registered in Hungary.

As regards the case when the licence is not registered in the relevant register, the Hungarian Group is not aware of any statutes or case law concerning the enforceability of the licence agreement against the new IP owner. It seems more likely than not that due to the principle of privity such unregistered licences will not be enforceable against the transferee, i.e. the new owner of the IP right who acquires the IP licence in the course of sale during the bankruptcy proceeding. Nevertheless, we emphasize that in lack of statutes and case law, it is not foreseeable how the court will decide in a legal dispute.

9) In the event an IP license is terminated during a bankruptcy or insolvency proceeding in your country, would the licensee be able to continue using the underlying IP rights (and if so, are there any limitations on such use)? Does the (former) licensee have a claim to obtaining a new license?

No, the law does not provide the possibility for the licensee to continue using the underlying IP rights if its IP license is terminated during bankruptcy and insolvency proceedings. Neither has the licensee a claim to obtain a new license in that case.

As a special rule, we note that if the holder of a compulsory license ceases to exist or if any of its organizational units are separated, the compulsory license shall be transferred to the successor in title.

10) If IP rights that are jointly owned by two parties have been licensed to a licensee by one or both of the joint owners, and one of the joint owners becomes insolvent, how would the IP license be treated in a bankruptcy or insolvency proceeding in your country? Could the IP license be terminated even if this would result in termination of an agreement between the solvent, joint rights owner and the solvent licensee?

Although the wording of such IP license would have a decisive impact on the outcome of such situation, we are of the opinion that for lack of any special clauses in the IP license agreement, the IP license could not be unilaterally terminated by the administrator of co-owner under bankruptcy or insolvency proceeding. Our argumentation is based on the following: where there are two or more holders for the same IP right, the license may be granted to a third party jointly by the holders only. Thus, the IP license would be effective until the joint owners reach an agreement about the termination of the IP license agreement. Nevertheless, the consent of the

other holder may be replaced by a court decision under certain circumstances under the general provisions of civil law.

11) Are there non-statutory based steps that licensors and licensees should consider in your country to protect themselves in insolvency scenarios, e.g., the creation of a dedicated IP holding company, creation of a pledge or security interest in the licensed IP for the benefit of the licensee, registration of the license, and/or inclusion of certain transfer or license clauses?

It is the opinion of the Hungarian Group that for the sake of the protection of their own rights and position in a potential liquidation proceeding, it is advisable that licensor shall stipulate in the agreement that the licensor is entitled to terminate the license agreement if the licensee goes under liquidation so that the sale (transfer) of the license to an undesirable third party during liquidation can be avoided.

As for licensees, it is essential to have the license registered in the register of HIPO, so that the license may be invoked against buyers of the IP right via liquidation. It is furthermore considerable to stipulate for the benefit of the licensee the option right to buy the IP right in the event the licensor goes under liquidation. Such option right is possible under the Civil Code provided that the purchase price and the subject of the right is very specifically defined in the agreement between the parties (Article 6:225 of the Civil Code). Another tool of the licensee's protection is if the right of pre-emption is stipulated for his/her benefit in the license agreement in case the licensor goes under liquidation. Based on such clause the licensee may buy the IP right at the purchase price a third party would pay in the liquidation proceeding (Article 6:221 of the Civil Code). The bankruptcy administrator shall notify the holders of the pre-emption right on the sale of the respective assets (Section 48(2) of the Liquidation Act).

II. Policy considerations and proposals for improvements to your current system

12) If your country has a registration system for IP licenses, is it considered useful? Is it considered burdensome? Are there aspects of the system that could be improved?

In Hungary, IP rights with the exception of copyright are registered. IP licences can be registered in the IP registers, which is generally considered useful. The registration of an IP licence is, however, not a precondition of validity of the IP licence, which means that unregistered IP licences can exist outside the IP register, too. Unregistered IP licences, however, cannot be enforced against third parties.

13) If the law that governs bankruptcy and insolvency proceedings in your country does not address IP rights or IP licenses as distinct from other types of contracts, assets, and property rights, should it do so? If yes, should the law be statutory?

Yes, the Hungarian Group is of the view that the legislation should expressly address IP rights or IP licenses in the form of separate and special rules (either in bankruptcy and insolvency laws or IP laws). IP rights and licences often represent high value. Legal certainty and predictability, the protection of the investments of the parties (i.e., the investments of the licensee to introduce to the market the new product manufactured under the licence) require that the issue of IP rights and licences in bankruptcy and insolvency proceedings should not be decided by scarce case-law.

14) With regard to a bankruptcy administrator's ability to adopt, assign, modify, or terminate an IP license under the current law of your country, are there aspects of this

law that could or should be improved to limit this ability? Should equitable or public policy considerations be taken into account?

Yes, we believe there is room for improvement in the current laws which enable bankruptcy administrators to terminate IP licenses. This puts licensees at significant risk.

The Hungarian Group is aware of the interests of the creditors and the licensees, which are partly in conflict and shall be balanced in insolvency proceedings. The bankruptcy administrator shall attempt to achieve the highest possible revenue for the benefit of the creditors. An IP right without the burden of a license could be sold at a higher price. On the other hand, a licensee may have paid a high initial license fee, making thereby significant investment, and the license agreement may be terminated by the bankruptcy administrator, which, if at all, only gives ground to indemnification claims which are hardly enforceable against an undertaking in insolvency. Therefore, we would introduce equitable legal instruments in favour of licensees.

15) Are there other changes to the law in your country that you believe would be advisable to protect IP licenses in bankruptcy? If yes, please explain.

For reasons explained under paragraph 14 above, the Hungarian Group would consider stipulating statutory pre-emption right for registered IP license holders in case of the insolvency of the IP owner. This way, licensees would be able to acquire the IP right they are licensing under the same conditions as other parties would acquire it.

If there are several registered licensees (non-exclusive licence), and they are exercising the pre-emption right simultaneously, they will become joint holders of the IP right in equal ratio, and all of them could exploit the IP right, without payment of any remuneration to the other right-holder(s) who acquired the interest in the IP right as former licensee (in light of the special circumstances of the acquisition of the IP right, this rule would be a deviation from the general rule that although the IP right may be exploited by any one of the joint holders alone; however, he shall be obliged to pay appropriate remuneration to the other holders, in proportion to their shares).

We would also suggest establishing the possibility for the licensee to request that the termination of the license agreement by the bankruptcy administrator should enter into effect only at the time of the sale of the IP right. This would enable licensees to use their license until the sale of the IP right in the period between the termination of the license agreement and the actual sale of the IP right.

III. Proposals for substantive harmonisation

The Groups are invited to put forward proposals for the adoption of harmonised laws in relation to treatment of IP licenses in bankruptcy and insolvency proceedings. More specifically, the Groups are invited to answer the following questions *without* regard to their existing national laws.

16) Is harmonization of laws relating to treatment of IP licensing in bankruptcy and insolvency proceedings desirable?

The Hungarian Group strongly agrees with the harmonization of laws on IP licensing in bankruptcy and insolvency proceedings. The harmonization would enable predictability in particular in case of cross-border licensing. Further, beyond harmonization in bankruptcy and insolvency proceedings, the Hungarian Group considers also important to have express rules and harmonization of laws on enforcement if the subject matter of the enforcement is an IP right which is

subject to licensing. Example: the patentee grants pledge on its patent to its bank as security of a loan and the patent is subject to a licence agreement. If the patentee, as debtor does not pay to the bank, the bank will be entitled to enforce its claim from the patent under the pledge. The licensee shall be expressly protected that the transfer of the patent in the course of the enforcement proceedings does not effect the licence agreement.

17) Please provide a standard that you consider to be best in each of the following areas:

a) What restrictions, if any, should be placed on a bankruptcy administrator's ability to adopt, assign, modify, or terminate an IP license in the event of bankruptcy of a party to that license? Should these restrictions be statutory?

The Hungarian Group would create the statutory possibility for the licensee to request that the termination of the license agreement by the bankruptcy administrator should enter into effect only at the time of the sale of the IP right. This would enable licensees to use their license until the sale of the IP right in the period between the termination of the license agreement and the actual sale of the IP right.

Further, Hungarian Group recommends to establish statutory pre-emption right for registered IP license holders in case of the insolvency of the IP owner. This way, licensees would be able to acquire the IP right they are licensing under the same conditions as other parties would acquire it (see our response to question 15).

b) With regard to sub-paragraph 17(a) above, to what degree, if at all, should such restrictions depend upon pre-bankruptcy registration of the IP license?

For the sake of transparency and clarity, restrictions under sub-paragraph 17(a) above should depend on the pre-bankruptcy registration of the IP license.

c) With regard to sub-paragraph 17(a) above, to what degree, if at all, should such restrictions depend upon whether the bankrupt party is the licensor or a licensee?

Such restrictions should only apply to licensors in insolvency.

d) With regard to sub-paragraph 17(a) above, to what degree, if at all, should such restrictions depend upon whether the licensee has a security interest in the underlying IP rights?

No.

e) With regard to sub-paragraph 17(a) above, to what degree, if at all, should such restrictions depend upon whether the license is a sub-license or a "main" license?

The statutory pre-emption right of the main licensee described in paragraph 15 above should precede that of the sub-licensee. If the main licensee exercises its pre-emption right and acquires the IP right, it will be bound by the former agreement with the sub-licensee to grant licence.

f) With regard to sub-paragraph 17(a) above, to what degree, if at all, should such restrictions depend upon whether the license is sole, exclusive or non-exclusive?

Restrictions should not depend on whether the license is sole, exclusive or non-exclusive.

g) With regard to sub-paragraph 17(a) above, to what degree, if at all, should such restrictions depend upon the type or types of IP rights that are licensed in the IP license?

Our proposal relating to the effective date of the termination by the administrator in sub-paragraph 17(a) above shall apply to all IP licences. Our proposal on statutory pre-emption right in favour of the licensee in sub-paragraph 17(a) above shall apply to all registered IP licences.

h) With regard to sub-paragraph 17(a) above, to what degree, if at all, should such restrictions depend upon equitable or public policy considerations?

No.

i) With regard to sub-paragraph 17(a) above, to what degree, if at all, should such restrictions depend upon the language of the license itself, e.g., a right to terminate upon insolvency or a prohibition against assignment?

No, restrictions should be statutory.

j) In the event a bankruptcy or insolvency proceeding in your country involves treatment of an IP license between a domestic entity and a foreign entity, which national bankruptcy laws should be applied? Should this depend on the choice of law clause in the IP license? Should this depend on the physical location of the entities or the assets involved?

According to Article 3 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), a contract shall be governed by the law chosen by the parties. According to Article 9 (2) of the Regulation, nothing in this regulation shall restrict the application of the overriding mandatory provisions of the law of the forum.

As for relations with countries outside the EU, according to Section 25 of the Law-Decree No. 13 of 1979 on International Private Law a contract shall be governed by the law chosen by the parties at the time of the conclusion of the contract, or any time thereafter, for the whole or for only part of the contract. Copyrights shall be adjudged according to the law of the state in the territory of which protection is required (in practice usually the territory of the country where the use occurs). As for other IP rights, an inventor and his legal successor shall receive protection according to the law of the state and in the state in which the patent was granted or where the application was filed. This rule shall duly apply also to other rights of industrial right protection. The application of foreign law shall be disregarded if it conflicts with Hungarian public policy and the Hungarian law shall apply in place of the disregarded foreign law.

On the basis of the above, we are of the opinion that the Hungarian laws on bankruptcy and liquidation procedure shall be regarded as overriding

mandatory provisions of the law of the forum which should be applied irrespective of the law chosen by the parties. Thus, the bankruptcy or insolvency laws of the forum (i.e., the state in which the IP holder is established) shall apply.

18) To the extent not already stated above, please propose any other standards that you believe would be appropriate for harmonization of laws relating to treatment of IP licenses in bankruptcy and insolvency proceedings.

No further proposal.

Summary

The Hungarian bankruptcy law does not address IP rights and IP licenses as distinct from other type of contracts and assets. In general, the bankruptcy administrator has power to terminate, with immediate effect, the contracts concluded by the debtor, including licence agreements.

In Hungary, IP rights, with the exception of copyright, are registered. The registration of an IP licence is not a precondition of validity of the IP licence. Unregistered IP licences, however, cannot be enforced against third parties.

For the protection of the licensee, we suggest establishing statutory pre-emption right for registered IP licensee in case of the insolvency of the IP holder. This way, licensees would be able to acquire the IP right they are licensing under the same conditions as other parties would acquire it. Further, we suggest creating the possibility for the licensee to request that the termination of the license agreement by the administrator should enter into effect only at the time of the sale of the IP right. This would enable licensees to use their license in the period between the termination of the license agreement and the actual sale of the IP right.

Further, beyond harmonization in bankruptcy proceedings, the Hungarian Group considers also important to have express rules and harmonization of laws on enforcement if the subject matter of the enforcement is an IP right which is subject to licensing.

Résumé

Le droit hongrois de la faillite ne distingue pas les droits et contrats de propriété intellectuelle des autres contrats et actifs. D'une manière générale, l'administrateur a donc le pouvoir de rompre les contrats conclus par le débiteur y compris les contrats de licence.

En Hongrie, les droits de propriété intellectuelle font l'objet d'un enregistrement, à l'exception des droits de copyright. L'enregistrement du contrat de licence n'est pas cependant une condition de validité de la licence mais une condition d'opposabilité aux tiers.

Dans un souci de protéger le licencié, nous proposons l'adoption d'une législation consacrant le droit de préemption du licencié partie à un contrat de licence enregistré, dans l'hypothèse de l'insolvabilité du concédant. Ainsi, les licenciés pourraient acquérir les droits qu'ils exploitent aux mêmes conditions que tout autre tiers au contrat désireux d'acheter ces derniers. De plus, nous proposons également de créer la possibilité pour le licencié de demander à l'administrateur que la rupture du contrat ne prenne effet qu'au jour de la vente des droits de propriété intellectuelle. Cela permettrait au licencié d'utiliser la licence pendant la période entre le moment où le contrat de licence prend fin et le moment de la vente effective des droits de propriété intellectuelle.

Enfin, au-delà de l'harmonisation des procédures du droit de la faillite, le Groupe Hongrois estime qu'il est également important que l'exécution des contrats de licence soumis à enregistrement soit régie par des règles harmonisées et explicites.

Zusammenfassung

Das ungarische Insolvenzrecht befasst sich nicht mit IP-Rechten und Lizenzen, es unterscheidet sie nicht von anderen Vertragstypen und Vermögensgegenständen. Der Konkursverwalter hat die Befugnis die durch den Schuldner geschlossenen Verträge, einschließlich Lizenzvereinbarungen, mit sofortiger Wirkung zu kündigen.

In Ungarn werden IP-Rechte mit Ausnahme der Urheberrechte registriert. Die Eintragung der IP-Lizenz ist keine Gültigkeitsvoraussetzung für die IP-Lizenz. Nicht registrierte IP- Lizenzen können jedoch Dritten gegenüber nicht durchgesetzt werden.

Zum Schutz des Lizenznehmers empfehlen wir die Einführung eines gesetzlichen Vorkaufsrechts für den registrierten IP-Lizenznehmer, welches im Falle der Insolvenz des IP-Inhabers ausgeübt werden kann. Auf diese Weise wäre der Lizenznehmer in der Lage, die IP- Recht unter den gleichen Bedingungen zu erwerben, wie Dritte. Ferner schlagen wir vor, dem Lizenznehmer ein Recht einzuräumen, wonach er verlangen könnte, dass die Kündigung des Lizenzvertrages durch den Konkursverwalter nur zum Zeitpunkt des Verkaufs der IP- Recht in Kraft treten soll. Dies würde es dem Lizenznehmer ermöglichen, seine Lizenz in dem Zeitraum zwischen der Kündigung der Lizenzvereinbarung und dem eigentlichen Verkauf der IP- Recht zu nutzen.

Neben der Harmonisierung der Normen des Konkursverfahrens hält es die ungarische Gruppe auch für wichtig, eine eindeutige Regelung und Harmonisierung der Gesetze für Zwangsvollstreckungsverfahren zu haben, deren Gegenstand die Vollstreckung eines IP-Rechts ist, welches gleichzeitig auch Gegenstand einer Lizenz ist.