AIPPI

Question Q241

National Group: ESTONIA

Title: **IP licensing and insolvency**

Contributors: Tiina PUKK (assistant Rauno KINKAR)

Reporter within Working Committee:

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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.

In accordance with Patent Act § 46, Utility Model Act § 43, Layout–Designs of Integrated Circuits Protection Act § 50 and Industrial Design Protection Act § 74 licenses may be registered in the register, whereas an unregistered license has no legal effect with respect to third persons. In accordance with Trade Marks Act § 21 an entry shall be made in the register concerning a license if a party to the license agreement so requests.

Not registering a license shall not affect the validity of a license. A registered license provides benefits in case of a possible collision of rights and it has legal effect with respect to third persons (e.g. a person who has a registered license can file a plaint against the violator of the patent proprietor's exclusive right).

A license is granted pursuant to a license agreement (Patent Act § 43 section 1, Utility Model Act § 43 section 1, Industrial Design Protection Act § 74 section 7 and Integrated Circuits Protection Act § 50 section 7). Upon the transfer of ownership to another person, the rights and obligations deriving from the license are also transferred to the said person (Patent Act § 46 section 5, Utility Model Act § 43 section 5, Integrated Circuits Protection Act § 51 section 3 and Industrial Design Protection Act § 75 section 3).

In accordance with Principles of Legal Regulation of Industrial Property Act § 31 section 3 if a license is issued in respect of an object of industrial property rights, data pertaining to the licensee and the nature, scope and term of the license shall be

entered in the register accompanied by other conditions entry of which in the register is deemed necessary.

The Estonian industrial property legislation regulates the registration procedure of licenses (Patent Act § 46 section 4, Utility Model Act § 43 section 4, Integrated Circuits Protection Act § 52, Industrial Design Protection Act § 76 and Trade Marks Act § 505), whereas the state fee for recording a license agreement shall be paid in accordance with State Fees Act (§ 139). In order to register the license the licensor or licensee must file an application with the Estonian Patent Office that must contain the following data:

a) the name and domicile or residence of the licensor;
b) the name and domicile or residence of the licensee;
c) the subject of the license;
d) the list of rights provided to the licensee;
e) the period of validity of the license;
f) other data that the licensor and licensee consider necessary to enter in the register.

The application shall be accompanied by the license agreement or its legalized copy or extract that contains the data listed above. The entry regarding a registered license agreement will be erased from the register upon expiry of the period of validity of license or upon the agreement of the licensor and licensee.

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

Bankruptcy Proceedings

Bankruptcy proceedings of insolvent entities are primarily governed by the Bankruptcy Act, in force since 2004. The Bankruptcy Act applies to the bankruptcy proceedings of both legal persons and natural persons, which are carried out following generally the same procedure with only certain differences and exceptions in the case of natural persons. Bankruptcy proceedings of two types of entities, namely credit institutions and insurance undertakings, are additionally regulated by the Credit Institutions Act and Insurance Activities Act respectively, which supplement or substitute parts of the regulations of the Bankruptcy Act.

Bankruptcy cases are considered as civil cases and are therefore heard exclusively by the general (civil) courts. Bankruptcy petitions are filed with and heard at the courts of first instance (county courts). All disputes related to the bankruptcy proceedings, including claims aimed at recovering the debtor's assets and disputes over the acceptance of claims, are also heard by the same (civil) court, even if these concern issues that would normally fall under the competence of an administrative court (for example, disputes over the existence or size of the debtor's tax debt). Similarly to other civil cases, the decisions and orders of the court of first instance (with some exceptions) may be contested by submitting an appeal to a circuit court and, in the last instance, an appeal in cassation to the Supreme Court.

Creditors may place a debtor in involuntary liquidation by submitting a bankruptcy petition against the debtor, which may lead to liquidation of the debtor as a result of bankruptcy proceedings. The bankruptcy petition of a creditor must firstly substantiate the debtor's insolvency and secondly prove the existence of a claim against the debtor.

The bankruptcy petition submitted by a creditor will be discussed at a court hearing, where both the creditor and the debtor are present. Unless some circumstances precluding commencement of bankruptcy proceedings exist, the court shall most probably decide to appoint an interim trustee. The appointment of an interim trustee does not mean that the debtor actually is permanently insolvent; it only means commencement of investigation into the debtor's financial situation. The investigation is conducted by the interim trustee, who will finally prepare a report to the court regarding the debtor's financial situation and also give its opinion on (the reasons of) the debtor's insolvency.

The management board of a company is required to commence insolvency proceedings as soon as it has become evident that the company is permanently insolvent. If this should be the case, the bankruptcy petition must be submitted to the court promptly but not later than within 20 days after the date on which the insolvency became evident. Failure to fulfil the obligation to submit a bankruptcy petition may bring about the liability of members of the management board for the damage caused to the company. In addition, failure to fulfil this obligation may also entail criminal liability of the members of the management board and punishment by a fine or up to one year's imprisonment.

After declaration of a debtor's bankruptcy, the court shall immediately publish a bankruptcy notice in the Official Notices. In addition, the bankruptcy trustee shall notify all creditors known to the trustee of the bankruptcy order and the time and place of the first general meeting of creditors.

Creditors shall also be informed by a notice in the Official Notices of the time and place for examining the distribution proposal and the possibility to file objections to the proposal with the court.

Creditors exercise their rights by participating and voting at general meetings of creditors.

At the first creditors' meeting, the creditors shall elect a bankruptcy committee and decide the number of members in the committee. The duties of the committee are to protect the interests of all the creditors, monitor the activities of the trustee and perform other duties provided by law

As a rule the creditors can not initiate proceedings to pursue remedies against third parties. The creditors may pursue debtor's claims only regarding the (limited) liabilities of members of the management board and supervisory board and shareholders.

Creditors have to submit their claims to the bankruptcy trustee within two months from the day the bankruptcy decision is published in the Official Notices. The claims have to be submitted in written form, the application must include the claim's substance, basis and amount, as well if it is a claim secured by a pledge. Proof of these circumstances has to be submitted and the claim has to be signed by the creditor or by a proxy, in which case the power of attorney has to be submitted.

There is no difference between governmental and non-governmental claims. The claims have the following priority ranks:

(i) claims secured by pledge (in the amount of the corresponding pledge coverage);

(ii) accepted claims submitted within the foreseen deadline (two months from publishing the bankruptcy notice); and

(iii) accepted claims submitted after the named deadline.

After declaration of bankruptcy the debtor or the bankruptcy trustee may submit a compromise proposal and this needs to be approved by the creditors and the court.

Bankruptcy estate is sold by auction pursuant to the procedure provided by the Code of Enforcement Procedure unless otherwise provided in the Bankruptcy Act. The starting price of assets shall be determined by the trustee and approved by the bankruptcy committee.

After the last meeting for the defence of claims, the trustee shall prepare a distribution proposal. Before payment of money on the basis of distribution ratios, payments relating to the bankruptcy proceedings shall be made out of the bankruptcy estate.

The claims of the creditors shall be satisfied in the priority ranking listed above.

Voluntary liquidation decisions may be adopted by shareholders, the decision is registered at the Commercial Register. After liquidation proceedings the liquidators submit an application to the Business Register for deletion of the company from the Business Register.

Reorganisation

The reorganisation of an enterprise means the application of a set of measures in order for an enterprise to overcome economic difficulties, to restore its liquidity, improve its profitability and ensure its sustainable management.

Reorganisation proceedings are primarily governed by the Reorganisation Act, in force since 2008.

Reorganisation is applied only with regard to legal persons in private law.

An application for the reorganisation of an undertaking (hereinafter reorganisation petition) shall be submitted by the undertaking.

A court shall commence reorganisation proceedings if the reorganisation application meets the requirements of the Code of Civil Procedure and Reorganisation Act and if the undertaking has substantiated that the undertaking is likely to become insolvent in the future, the enterprise requires reorganisation and the sustainable management of the enterprise after the reorganisation is likely.

The most important consequences of commencement of reorganisation proceedings are that a court suspends enforcement proceedings conducted regarding the assets of the undertaking and on the basis of a bankruptcy petition of an obligee, a court suspends deciding on the commencement of bankruptcy proceedings until the approval of the reorganisation plan or termination of the reorganisation proceedings.

A court shall appoint a reorganisation adviser upon commencement of reorganisation proceedings after having considered the opinion of the undertaking. Upon making the decision, the court is not required to take account of the opinion of the undertaking.

After the commencement of reorganisation proceedings, a reorganisation adviser shall prepare a reorganisation plan in the name of the undertaking. A reorganisation plan shall set out the following: the description of the economic position of the enterprise and the analysis of the reasons which have brought about the need to reorganise the enterprise; the expected economic position of the enterprise after

reorganisation; the term for compliance with the reorganisation plan; the description of the reorganisation measures to be implemented and the analysis of their purposefulness, including the description of and justification for the transformation of a claim of an obligee; the impact of the reorganisation plan on the employees of the enterprise.

The obligees shall accept a reorganisation plan by way of voting at a meeting or without holding a meeting - if the obligees have accepted a reorganisation plan, it shall be submitted to the court for approval.

Upon approval of a reorganisation plan, the legal consequences prescribed in the reorganisation plan apply to an undertaking and a person whose rights are affected by the reorganisation plan.

Reorganisation within bankruptcy proceedings is carried out under the control of the bankruptcy trustee, whose activities are supervised by the creditors through the bankruptcy committee and also by the court. Creditors also exercise control over the debtor's business through their right to terminate the activities of the rehabilitated enterprise at any time, if they find that rehabilitation has failed regardless of the rehabilitation plan.

If reorganisation is conducted according to a compromise that includes a rehabilitation plan, then fulfilment of the rehabilitation plan is again supervised by the bankruptcy committee. The court's supervision is limited to the right of annulment of the compromise if the debtor does not or is unable to fulfil its obligations under the compromise, which brings an end to rehabilitation as well.

Release of a Debtor Who Is a Natural Person from Obligations

A debtor who is a natural person may be released from his or her obligations which were not performed during the bankruptcy proceedings. The debtor is released from his or her obligations on the bases and pursuant to the procedure described in chapter 11 of the Bankruptcy Act.

Commencement of proceedings for the release of a debtor from his or her obligations shall be decided by the court and based on a petition of the debtor.

If a court commences proceedings for the release of a debtor from his or her obligations, the court shall appoint a trusted representative on the proposal of the general meeting of creditors and the debtor shall make payments to such representative.

A debtor is required to engage in reasonably profitable activity or seek such activity if he or she does not have it – a proportion of the earnings of the debtor shall be transferred to the trusted representative who in turn shall satisfy the claims of the creditors.

At the request of a debtor, the court shall decide on the release of the debtor from his or her obligations which were not performed during the bankruptcy proceedings by a ruling five years after commencement of the proceedings for the release of the debtor from his or her obligations – the court may choose to release the debtor sooner but no sooner than in three years.

If a debtor is released from his or her obligations which were not performed during the bankruptcy proceedings, the claims of the creditors against the debtor, including the

claims of the creditors who did not file their claims during the bankruptcy proceedings, terminate.

Debt Restructuring

In debt restructuring proceedings the restructuring of the financial obligations of a debtor is made possible by way of extension of the term of performance of an obligation, by way of performing the obligation in instalments or by way of reducing the obligation.

Debt Restructuring is an analogue of reorganisation but applicable to natural persons.

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.

There are no specific regulations regarding handling of IP rights under bankruptcy, apart from the ones mentioned below.

Pursuant to article 19 of the Trade Mark Act a trade mark cannot be surrendered if the trade mark is included in a bankruptcy estate and pursuant to article 23 if a registered trade mark is included in a bankruptcy estate, a corresponding notation is made in the register at the request of the trustee in bankruptcy or a court.

Pursuant to article 16 of the Principles of Legal Regulation of Industrial Property Act a prohibition shall be made, inter alia, in the cases provided for in an Industrial Property Act in order to restrict or prohibit disposal of an object of industrial property rights in connection with the bankruptcy of the owner if the object of industrial property rights is included in the bankruptcy estate.

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.

Termination and Right to Abandon Performance of an Obligation

Bancruptcy proceedings have no inherent effect on the legal effects of IP licenses or any other contractual rights or obligations. Bankruptcy proceedings in and of themselves do not grant bankruptcy administrators the right to terminate an IP license.

However, the general principle states that it is up to the interim trustee to decide whether to continue the fulfilment of a certain contract depending on the interests of the debtor. As such, a trustee has the right to perform an unperformed obligation arising from a contract entered into by the debtor and require the other party to perform the obligations thereof, or abandon performance of an obligation arising from a contract entered into by the debtor, unless otherwise provided by law.

If the other party makes a proposal to the trustee to exercise the abovementioned choice, the trustee shall immediately but not later than within

seven days give notice of whether he or she will or will not perform the debtor's obligation.

If a trustee requires performance of a contract from the other party to the contract, the other party may require the trustee to secure performance of the obligation of the debtor. The other party may refuse to perform the obligation thereof, withdraw from the contract or cancel the contract until the trustee has secured performance of the debtor's obligation.

As a rule, either party may cancel an IP license agreement entered into for an unspecified term by giving at least one year's notice pursuant to article 374 of the Law of Obligations Act.

However, the right to abandon performance of an obligation might in certain cases bring about the right to cancel the contract without giving advance notice, in particular if the party cancelling the contract cannot reasonably be expected to continue performing the contract until the due date agreed upon or until expiry of the term for advance notice taking into account all the circumstances and the mutual interests of the parties.

Adoption and Assignment

The general principles of transfer of usage right arising from a license are regulated by Law of Obligations Act Chapter 18 "Licensing Agreement". In accordance with Law of Obligations Act § 371 sections 1 and 2 it is presumed that the right of use arising from a license agreement may be transferred only with the consent of the licensor. The licensor shall grant consent if this can be expected of the licensor based on the principle of good faith. These provisions do not apply upon transfer of an enterprise if the right of use belongs to the enterprise.

Therefore, the bankruptcy administrator shall have the right to adopt from or assign to a third party an IP license only if the corresponding licencor has given consent.

Modification

Modification of IP license terms is possible only pursuant to an agreement between the parties.

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

There are no equitable or public policy regulations regarding handling of IP rights under bankruptcy.

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

Bancruptcy and insolvency proceedings are primarily regulated in the following acts:

Bankruptcy Act facilitates the bankruptcy procedure in which the claims of the creditors are satisfied out of the assets of the debtor by transferring the assets of the debtor or rehabilitating the undertaking thereof.

Debt Restructuring and Debt Protection Act facilitates the restructuring of the debts of a natural person having solvency problems (debtor), in order to overcome the solvency problems and avoid bankruptcy proceedings.

Reorganisation Act regulates the reorganisation proceedings of enterprises the aim of which is to take account of the interests and protect the rights of undertakings, obligees and third parties in the course of reorganisation of the enterprises.

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

There are no special requirements or preferences relating to registered or unregistered licenses under bankruptcy.

Not registering a license shall not affect the validity of a license in bankruptcy proceedings.

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?

Intellectual property rights can be pledged. The general regulation of pledging intellectual property is provided by Law of Property Act.

Any claim which can be valuated in money may be secured by a pledge.

In accordance with Law of Property Act § 297 forms of intellectual property including patents, utility model, layout–designs of integrated circuits, industrial designs, trade marks, plant varieties and geographical indications, which are entered in a state register may be encumbered with a registered security.

In bancruptcy proceedings claims secured by a pledge shall be satisfied first. The licensee whos license is secured by a pledge shall be able to demand satisfaction before the rest of the creditors and in the extent of 85% of the money received from the sale of the pledged object. 15% of the money received from the sale of the pledged object shall be used to cover the costs of the bankruptcy proceedings.

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.

Estonian bancrupty law is generally not limited to or applied differently among certain types of IP rights.

However, if a registered trade mark is included in a bankruptcy estate, a corresponding notation is made in the register at the request of the trustee in bankruptcy or a court. Also see answer to question 3 above.

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

Estonian bancrupty law is not applied differently in case of sub-licenses versus “main” licenses.

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

Estonian bancrupty law is not applied differently to sole or exclusive licenses versus non-exclusive licenses.

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

In most cases Estonian bancrupty law is not applied differently if the bankrupt party is the licensee versus the licensor.

However, in accordance with Law of Obligations Act § 371 sections 1 and 2 it is presumed that the right of use arising from a license agreement may be transferred only with the consent of the licensor. The licencor itself is free to transfer the right to receive payment arising out of the license.

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

NIL

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, this would be counter to the idea and true meaning of the Bancruptcy Acy – all of the debtors assets become a part of the bancruptcy estate and agreements entered into by the debtor should not be able to alter this.

The bankruptcy estate means the assets of the debtor at the time of the declaration of bankruptcy, the assets reclaimed or recovered and the assets acquired by the debtor during the bankruptcy proceedings. The debtor's assets which pursuant to law are not subject to a claim shall not be included in the bankruptcy estate.

Since licenses are subject to claim then, regardless of a choice of law provision the Estonian Bancruptcy Act will apply to all licenses the same. Any and all assets that the trustee is able to realise in the bankruptcy proceedings, he or she will realise.

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?

Article 196 of the Law of Obligations Act, which deals with termination of long-term contracts, is dispositive. Therefore it is possible to agree and enforce a license agreement pursuant to which either party has the right to terminate the license agreement at any time and for any reason (including insolvency) – however, the principle of good faith must still be followed.

Automatic termination is not possible pursuant to Estonian Law since a statement of intent for termination cannot be conditional – such a clause would be void.

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?

It is presumed that the right of use arising from a license agreement may be transferred only with the consent of the licensor. As such, a clause that restricts or prohibits transfer or assignment of the IP licensence would not be relevant in most cases.

However, the requirement of consent does not apply upon transfer of an enterprise if the right of use belongs to the enterprise. This exeption derives from article 371 (2) of the Law of Obligations Act and is imperative – agreements to the contrary are void and null. Therefore it is not possible to enforce a contractual clause that restricts or prohibits the transfer of an IP license in case of transfer of an enterprise if the IP license belongs to the enterprise.

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?

The general rule is that if a license has been transferred or assigned then rights and obligations arise only to the new parties to the agreement.

However, in addition to the protection which a transferee of a license has against the obligee, the transferee may set up such protection against the claim of the obligee which arises from the legal relationship between the obligee and the original obligor, except the defences which the original obligor personally has against the obligee.

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?

The holder of economic rights of an IP shall enjoy the exclusive right to use the work, trademark, utility model etc in any manner, to authorise or prohibit the use of the work in a similar manner by other persons and to receive income from such use of the work – therefore as a rule it is not possible to use an IP without the permition of the holder of the economic rights of an IP. There is no special regulation for bankruptcy or insolvency proceedings.

Pursuant to the principle of freedom of contract a person cannot, as a rule, be forced into a license agreement.

However, a person who is interested in using a patented invention and is capable of doing so in the Republic of Estonia, may, upon refusal of the proprietor of the patent to grant a license, file an action with a court for acquiring a compulsory license.

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?

There is no special regulation for bankruptcy or insolvency proceedings.

If the trustee were to choose to use right to terminate the agreement then the licensee would no longer have the right to use the licensed object – in effect the trustee has

unlimited opportunity to withdraw from contracts that he/she deems the contract to be counter to the interests of the debtor.

Therefore the answer to the second question is yes – the trustee has the right to terminate the license even if if this would result in termination of an agreement between the solvent, joint rights owner and the solvent licensee.

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?

A strong license agreement is the best instrument to protect one's intrests. As such, it is our recommendation to involve a lawyer who is fluent in Estonian IP law and general legal matters to the compiling of a license agreement that is going to be used in relation to IP or licensees based in Estonia.

As described above the registration of a license has no effect on the validity of a license – however, a registered license provides benefits in case of a possible collision of rights and it has legal effect with respect to third persons. Registration of IP rights, if possible, is therefore also highly recommended.

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?

The Estoninan IP license registration system in general is similar to international proceedings. There are public registeries only for trademark and patent licenses. The process itself is not considered burdensome.

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?

The issue of treating IP rights or licenses as distinct from other types of contracts, assets, and property rights deserves more attention. So far it has not been thouroghtly addressed and it is not possible to make any conclusions.

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?

It would require a comprehensive analysis on whether it is possible and advisable to extend the authorities of the trustee to decide on the matters of equity or public policy. Today, the rights of the trustee are quite formal. It could be considered whether it is possible to determine a set of conditions in case of which the trustee can or must refer the question of adopting, assigning, modifying or terminating an IP license to the general meeting of creditors or to the court to decide.

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.

There is no need for specific changes. Any fundamental changes shall need prior discussion on international or EU level.

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?

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?

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?

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?

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?

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?

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?

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?

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?

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?

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?

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.

The Groups are invited to comment on any additional issues concerning any aspect of IP law and insolvency that they deem relevant.

SUMMARY

Estonian law supports the registration of IP licenses regarding patents, utility models, layout-designs of integrated circuits and industrial designs. Registration of licenses is optional and the registration itself is not considered burdensome.

Insolvency procedures are regulated in the following acts: Bankruptcy Act, Debt Restructuring and Debt Protection Act and Reorganisation Act.

None of the above addresses IP licenses differently from other types of agreements, meaning general clauses apply.

As per general regulation, the trustee has no additional right to adopt, assign or modify IP licenses. However, the trustee may terminate an IP license if it is in the best interests of the debtor.

The question of adopting special regulation for IP licenses in Estonian insolvency legislation has not been fundamentally addressed but deserves greater attention. Considering the nature of IP rights, any principal changes should be initiated on an international level.

RESUME

La législation estonienne encourage l'enregistrement des licences de propriété intellectuelle concernant les brevets, modèles d'utilité, les schémas de configuration de circuits intégrés et de dessins industriels. L'enregistrement des licences est facultatif et l'enregistrement lui-même n'est pas considéré comme astreignant.

Les procédures d'insolvabilité sont régies par les lois suivantes: Loi sur la Faillite, Loi sur la Protection et la Restructuration de la dette et la Loi sur la Réorganisation.

Aucune des licences d'adresse IP ci-dessus à la différence d'autres types d'accords, ce qui signifie que les clauses générales s'appliquent.

Selon le règlement général, le syndic n'a pas de droit additionnel d'adopter, d'affecter ou de modifier les licences de propriété intellectuelle. Toutefois, le syndic peut mettre fin à une licence de propriété intellectuelle si c'est dans le meilleur intérêt du débiteur.

La question de l'adoption d'une réglementation spéciale pour les licences de propriété intellectuelle dans la législation estonienne de l'insolvabilité n'a pas été fondamentalement abordée mais mérite une plus grande attention. Compte tenu de la nature des droits de propriété intellectuelle, tout changement principal devrait être initié au niveau international.

ZUSAMMENFASSUNG

Das estnische Gesetz fördert die Anmeldung von Immaterialgüterrechtlichen Lizenzen, d. h. die Anmeldung von den Patenten, Gebrauchsmustern, Halbleiterschutzrechten und gewerbliche Schutzrechten. Die Anmeldung der Lizenzen ist freiwillig und die Anmeldung hält man nicht für belastend.

Insolvenzrechtliche Verfahren sind in den folgenden Gesetzen reguliert: im Insolvenzgesetz, Schulden Umgestalungs- und Schuldenschutzgesetz und Restrukturierungsgesetz.

Keiner der oben genannten Rechtsakte reguliert Immaterialgüterrechtlichen Lizenzen, d.h. allgemeinen Bedingunen finden Anwendung.

Nach der allgemeinen Regulation verfügt der Insolvenzverwalter über kein zusätzliches Recht eine Lizenz zu erteilen, abtreten oder die Immaterialgüterrechtlichen Lizenzen zu modifizieren. Allerdings kann der Insolvenzverwalter eine Immatrialgüterrechtliche Lizenz beenden, wenn es im Interesse des Schuldners ist.

Die Diskussion zur Einführung eine Regulation für Immaterialgüterrechtliche Lizenzen hat sich in Estland noch nicht wirklich erhoben, obwohl diese Angelegenheit eine größere Aufmerksamkeit verdient. Mit Rücksicht auf die Eigenschaften der Immaterialgüterrechten sollte die Initiative zur prinzipiellen Veränderungen von der internationalen Ebene kommen.