

USE OF IPR DURING INSOLVENCY PROCEEDINGS

PRE-INSOLVENCY - THE SOFTWARE COMPANY IN FINANCIAL DIFFICULTIES IS THE LICENSEE

Jurisdiction	Available procedures to the software company, licensee (in financial difficulties)	Termination rights of the licensor (in bonis)	Termination rights of the licensee (in financial difficulties)	Existing claims of the licensor and future payments to the licensor
Italy	Turn around plan (<i>piano di risanamento</i>)	yes, if pre-insolvency arrangements are contractually agreed as event of default	no, as a result of a pre-insolvency arrangement	as agreed between licensee (debtor) and licensor (creditor) and reflected in the turn around plan
	Pre-insolvent composition (<i>concordato preventivo</i>)			flexibility in the proposal for pre insolvent composition as to the existing claims, future payments will follow terms and conditions of the licence agreement
Germany	There are no specific insolvency procedures at the pre-insolvency stage to rescue a company.			

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France	Mediation (<i>mandat ad hoc</i>)	yes, if pre-insolvency arrangements are contractually agreed as event of default	no, as a result of the pre-insolvency arrangement.	as agreed between licensee (debtor assisted by the conciliator appointed by the Court) and licensor (creditor) and reflected in the confidential voluntary arrangement.
	Conciliation Proceedings (<i>procédure de conciliation</i>)			as agreed between licensee (debtor assisted by the conciliator appointed by the Court) and licensor (creditor) and reflected in the voluntary arrangement. If the agreement is recognized by the Court, it loses confidentiality, provides for a super priority for new money injected under the agreement and cannot be challenged by administrator in case of future insolvency.
	Safeguard (<i>procédure de sauvegarde</i>):	no, as a result of the opening of safeguard procedure.		flexibility in the proposal for the safeguard plan as to the existing claims and future payments.

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England	Company voluntary arrangement	yes, if pre-insolvency arrangements are contractually agreed as event of default	no, as a result of a pre-insolvency arrangement	as agreed between licensee (debtor) and licensor (creditor) and reflected in the company voluntary arrangement
	Scheme of arrangement			flexibility in the proposal for the scheme of arrangement as to the existing claims and future payments

PRE-INSOLVENCY - THE SOFTWARE COMPANY IN FINANCIAL DIFFICULTIES IS THE LICENSOR

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Italy	Turn around plan (piano di risanamento)	no, as a result of a pre-insolvency arrangement	yes, if pre-insolvency arrangements are contractually agreed as event of default	Unaffected by a pre-insolvency arrangement
	Pre-insolvent composition (concordato preventivo)			
Germany	There are no specific insolvency procedures at the pre-insolvency stage to rescue a company.			
France	Mediation (<i>mandat ad hoc</i>)	no, as a result of the pre-insolvency arrangement.	yes, if pre-insolvency agreements are contractually agreed as event or default.	Unaffected by a pre-insolvency arrangement.
	Conciliation procedure (<i>procédure de conciliation</i>)			
	Safeguard (<i>procédure de sauvegarde</i>)		no, as a result of the opening of safeguard procedure.	

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England	Company voluntary arrangement	no, as a result of a pre-insolvency arrangement	yes, if pre-insolvency arrangements are contractually agreed as event of default	flexibility in the proposal for the company voluntary arrangement or scheme of arrangement as to the existing claims and future payments
	Scheme of arrangement			

INSOLVENCY - THE INSOLVENT SOFTWARE COMPANY IS THE LICENSEE

Jurisdiction	Available procedure to the insolvent software company, licensee	Termination rights of the licensor (in bonis)	Termination rights of the licensee (insolvent)	Future payments to the licensor	Existing claims of the licensor
Italy	Bankruptcy (<i>fallimento</i>)	No automatic termination on entering bankruptcy even if the licence provides bankruptcy as an event of default	No automatic termination on entering bankruptcy even if the licence agreement provides bankruptcy as an event of default However trustee may terminate regardless any different provision in the licence agreement but the licensor has unsecured damage vis-à-vis the estate	If the committee of creditors authorizes the trustee to maintain the license agreement, fees have super-priority	Existing claims may not be enforced during the period of bankruptcy. Whether they are satisfied depends upon their filing and the outcome of the bankruptcy.

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Jurisdiction	Available procedure to the insolvent software company, licensee	Termination rights of the licensor (in bonis)	Termination rights of the licensee (insolvent)	Future payments to the licensor	Existing claims of the licensor
Germany	Preliminary insolvency proceedings (period between application and opening of insolvency proceedings)	No automatic termination on entering preliminary insolvency proceedings.	No automatic termination on entering preliminary insolvency proceedings.	Payments to be received under the preliminary insolvency proceedings have super priority only if the maintenance of the relevant licence agreement is authorised by the Court.	Whether they are satisfied depends upon their filing and the outcome of the preliminary insolvency proceedings.
	Regular insolvency proceedings	No automatic termination on entering regular insolvency proceedings.	Insolvency administrator may terminate regardless any different provision in the licence agreement but the licensor has unsecured damage vis-à-vis the estate	In case the insolvency administrator maintains the license agreement fees will have super-priority	Existing claims may not be enforced during the period of regular insolvency proceedings. Whether they are satisfied depends upon their filing and the outcome of the regular insolvency proceeding.

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Jurisdiction	Available procedure to the insolvent software company, licensee	Termination rights of the licensor (in bonis)	Termination rights of the licensee (insolvent)	Future payments to the licensor	Existing claims of the licensor
France	Rehabilitation proceedings (<i>redressement judiciaire</i>) / Liquidation	No automatic termination on entering bankruptcy even if the licence provides rehabilitation or liquidation as an event of default	No automatic termination on entering bankruptcy even if the licence agreement provides rehabilitation or liquidation as an event of default However administrator may terminate regardless any different provision in the licence agreement but the licensor has unsecured damage as provided in the licence vis-à-vis the estate subject to declaration of the damage claim	Priority only over certain claims which are not granted under a specific order.	Existing claims may not be enforced during the period of rehabilitation or liquidation. Whether they are satisfied depends upon their filing and the outcome of the rehabilitation/liquidation.

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England	Administration	<p>No automatic termination on entering administration.</p> <p>Yes, if the licence agreement provides for termination on licensee entering administration</p>	<p>No automatic termination on entering administration.</p> <p>Administrator may terminate the licence agreement under the terms of the agreement. If he terminates it in breach, the licensor would have an unsecured damages claim against the licensee.</p>	<p>If the administrator adopts the licence agreement, future payments are likely to have super-priority as expenses of the administration.</p>	<p>Existing claims may not be enforced during the period of administration. Whether they are satisfied depends upon the outcome of the administration, for example the company could subsequently go into liquidation or negotiate a company voluntary arrangement.</p>
	Liquidation	<p>No automatic termination on entering liquidation.</p> <p>Yes, if the licence agreement provides for termination on licensee entering liquidation.</p>	<p>No automatic termination on entering liquidation.</p> <p>Liquidator has the power to disclaim the licence agreement if it imposes onerous obligations on the licensee (and so is unprofitable for the licensee). If the liquidator does disclaim the licence, this brings it to an end and the licensor will have a damages claim in the liquidation.</p>	<p>If the liquidator adopts the licence agreement, future payments are likely to have super-priority as expenses of the liquidation.</p>	<p>Existing claims may not be enforced during the period of administration. Whether they are satisfied depends upon the outcome of the liquidation</p>

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Italy	Bankruptcy (<i>fallimento</i>)	No automatic termination on entering bankruptcy even if the licence agreement provides bankruptcy as an event of default However trustee may terminate regardless any different provision in the licence agreement but the licensor has unsecured damage vis-à-vis the estate	No automatic termination on entering bankruptcy even if the licence provides bankruptcy as an event of default	Unaffected by its bankruptcy
Germany	Preliminary insolvency proceedings	No automatic termination on entering preliminary insolvency proceedings.	No automatic termination on entering preliminary insolvency proceedings.	Unaffected by preliminary insolvency proceedings
	Regular insolvency proceedings	Insolvency administrator may terminate regardless any different provision in the licence agreement but the licensee has unsecured damage vis-à-vis the estate	No automatic termination on entering regular insolvency proceedings.	Unaffected by formal insolvency proceedings

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France	Rehabilitation proceedings (<i>redressement judiciaire</i>) / Liquidation	<p>No automatic termination on entering rehabilitation/liquidation even if the licence agreement provides rehabilitation or liquidation as an event of default</p> <p>However administrator may terminate regardless any different provision in the licence agreement but the licensor has unsecured damage as provided in the licence vis-à-vis the estate subject to declaration of the damage claim</p>	No automatic termination on entering rehabilitation or liquidation even if the licence provides bankruptcy as an event of default	Unaffected by rehabilitation or liquidation

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England	Administration	<p>No automatic termination on entering administration.</p> <p>Administrator may terminate the licence agreement under the terms of the agreement. If he terminates it in breach, the licensee would have an unsecured damages claim against the licensor.</p>	<p>No automatic termination on licensor entering administration.</p> <p>Yes, if the licence agreement provides for termination on licensor entering administration.</p>	Unaffected by its administration
	Liquidation	<p>No automatic termination on entering liquidation.</p> <p>Liquidator has the power to disclaim the licence agreement if it imposes onerous obligations on the licensor (and so is unprofitable for the licensor). If the liquidator does disclaim the licence, this brings it to an end and the licensee will have a damages claim in the liquidation.</p>	<p>No automatic termination on entering liquidation.</p> <p>Yes, if the licence agreement provides for termination on licensor entering liquidation.</p>	Unaffected by its liquidation