



YIGAL ARNON & Co.
LAW FIRM

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Treatment of License Agreements under Israeli Insolvency Law

Israel recently enacted a new Insolvency Law, which came into effect in September 2019. The statute substantially revises procedures and substantive rights in connection with corporate insolvency and bankruptcy. The law may allow debtor licensors more flexibility to terminate intellectual property license agreements.

Background and Analysis

Many Israeli companies, including financially vulnerable start-ups, commercialize their technology and intellectual property by providing licenses to domestic and foreign entities. Licensees often invest substantial resources in reliance on such license agreements. Given the commercial importance of such license agreements to their business, licensees may have concerns regarding the continued effectiveness of such agreements if the licensor enters insolvency proceedings.

Prior to the enactment of the new Israeli Insolvency Law, Israeli courts generally did not allow debtor licensors to terminate license agreements simply because a receiver believed that it could receive a better return within an alternative commercial framework. While the prior statutory framework permitted courts in insolvency proceedings to terminate "burdensome" or "unprofitable" executory contracts, courts generally did not allow licensors to terminate license agreements that were moderately profitable.

Section 70(d) of the new Insolvency Law provides that a court may allow for the cancellation of all or part of an executory contract if the court determines that such cancellation is either "required for the economic rehabilitation" of the debtor or alternatively will "increase the proportion of the debt that will be repaid to the creditors." Unfortunately, The Insolvency Law does not contain any express provisions comparable to Section 365(n) of the United States Bankruptcy Code, which generally limits the rights of debtor licensors to terminate rights granted under license agreements for intellectual property.

The legislative history of the new Insolvency Law does not address how the new standard for the termination of executory contracts would apply to license agreements for intellectual property. In addition, Israeli courts have not yet pronounced their interpretation of the new standard in the context of license agreements. However, it would seem that in principle the new statutory framework would in certain circumstances allow more flexibility for the termination of license agreements.

Firms structuring intellectual property licenses should be aware of the new uncertainties raised by the enactment of the new Israeli Insolvency Law, and should consult legal counsel in order to mitigate the risks raised by the new law.

Contact

Should you have any specific questions or concerns, please do not hesitate to be in touch with us.

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