

Innovative play between French and US laws: the cross-border acquisition of Viadeo a French/US-based social networking platform



PIERRE-GILLES WOGUE
ALTANA



JULIEN BALENSI
ALTANA

I. INTRODUCTION

In one of the first such cases of its type between France and the US, Chapter 15 was used to recognize a French sale process. US and French laws were successfully combined to demonstrate the flexibility and efficiency of their respective procedures in resolving complex issues in a very short time frame (less than a month). US law, particularly Chapter 15, offered an even more extensive framework in dealing with cross border issues which does not have an equivalent in France.

II. BACKGROUND ON THE MATTER

As background, Viadeo, a well-known web based professional social networking platform founded in 2004, sought to rival its American and German counterparts, LinkedIn and Xing respectively. At its peak, Viadeo had 45 million registered users worldwide, 11 million of which are subscribers in France, making it second only to LinkedIn. When it went public in 2014 Viadeo was valued at 200 million euros but after its failure to integrate into emerging countries and conquer the Asian market, the capitalization of the company collapsed in November 2016, its stock quotation was suspended and the company was placed in reorganization.

While a sale process was ongoing, the only possible outcome to preserve the business was a sale of Viadeo's business. The matter presented two main challenges: timing and location of assets. In particular, APVO, a wholly-owned subsidiary of Viadeo based in California, owned certain intangible IT assets necessary to Viadeo's operations.

All the parties, including the French court, U.S. court and foreign representatives, joined efforts to find a solution which successfully combined the French proceeding and U.S. Chapter 15.

III. FRENCH DECISION ON THE SALE MADE CONDITIONAL ON US RECOGNITION

The French court opened reorganization proceedings for the benefit of both Viadeo and APVO. A call for bids was published with a cut-off date of 19 December 2016. The French court, on 23 December 2016, accepted the bid made by Figaro Group, the leader in French internet media, to takeover Viadeo among the 6 offers which had been filed.

Given the time constraint, the use of the French "prepack" solution proved particularly relevant in this case. Relying on this French sale process which had been undertaken prior to reorganization proceedings, the French court was thus ensured that an effective search for potential purchasers had been conducted.

In a cross-border twist, the decision of the French court was made conditional on the recognition by a California court concerning the sale of APVO's assets within 7 days from the order. While French courts are reluctant to render conditional decisions, the Paris court was of the view that the absence of recognition would prevent any sale of the business and result in the likely liquidation of APVO and Viadeo.

IV. USE OF U.S. CHAPTER 15

Shortening of the Procedure and Recognition of a Foreign Main Proceeding

Given the time sensitivity, the US court issued an order shortening the time of the procedure and notice was served on all creditors and interested parties by 7 December 2016. The order recognized that by removing the risks related to the recognition of the sale by a US court, it would thus allow bidders to formulate their best offers for APVO's assets. Furthermore, the requested amount of time was found to be reasonable (9 days) and consistent with US law.

On 15 December 2016, the US Court issued an order recognizing the proceeding as a French “foreign main proceeding.” The decision was based on the fact that the following features of APVO were located in France: (i) management, (ii) accounting, (iii) customers and (iv) it’s largest creditor, Viadeo.

Upon recognition of a foreign main proceeding, the automatic stay went into effect, in order to protect APVO’s assets that are within the United States. It also activated another section of the US bankruptcy code which, in combination with Chapter 15, permits the transfer of interest in property within the territorial US, making way for the sale.

“One take-away from this case is the importance of conducting a sale process through out-of-court or preventive restructuring in combination with insolvency proceedings. It was shown that such a combination is the best way to preserve the value of the assets to be sold

This case also illustrates the added value of combining US and French proceedings despite the absence of a US-French bilateral agreement.”

Recognition and Enforcement of a French Sale Order

Immediately after having been rendered, the French sale order was submitted to the U.S. court. On 30 December 2016, the US Court issued the order granting recognition and relief, finding that *“the relief granted herein is necessary and appropriate, in the interests of the public and international comity, consistent with the public policy of the US ... and will not cause any hardship to any party in interest that is not outweighed by the benefits of granting that relief.”*

As a basis for the relief granted, among others, the US court relied on the French ‘pre-pack’ process. Namely, the motion demonstrated the marketing and sale efforts prior to and during the French proceeding, noting that it was carried out by the company, the foreign representatives, overseen by the French court, and with input from the company’s key stakeholders over a period of 4 months.

In further support of the sale, the Purchaser was shown to be neither an “insider” nor an “affiliate” of the foreign representative,

Viadeo or the Debtor, but was indeed a “good faith purchaser”. This finding of the US court was particularly important as it protects the purchaser from the risk that it will lose its interest in the asset if the order is reversed on appeal.

The required criteria for the recognition of a foreign insolvency proceeding are similar in France, where the French Court reviews (i) the jurisdiction of the foreign judge, (ii) compliance with international public policy and (iii) absence of fraud.

V. CLOSING

One take-away from this case is the importance of conducting a sale process through out-of-court or preventive restructuring in combination with insolvency proceedings. It was shown that such a combination is the best way to preserve the value of the assets to be sold.

This case also illustrates the added value of combining US and French insolvency proceedings despite the absence of a US-French bilateral agreement. It is also notable that the US, a common law system highly reliant on published judicial decisions, adopted Chapter 15, a set of statutory provisions based on the UN Model Law on Cross-Border Insolvency, whereas in France, the archetype of the civil law system, has no statutory provisions covering situations outside the scope of EU Regulation. An interesting paradox, showing that in matters of law pragmatism is of the essence.

ALTANA

Altana is a full-service business law firm with 80 lawyers, offering tailor-made legal assistance in complex cross-border and domestic matters.

Altana is regularly distinguished as among one of the most experienced players in the French restructuring market. The attorneys have an extensive national and international practice both in transactional and litigation matters with an extensive restructuring and special situation focus dealing with particularly complex interdisciplinary cases. Among recent matters, they advised the Figaro Group in the Viadeo transaction. Additionally, Altana frequently participates in Expert working groups at national and international levels regarding reforms and EU regulations.

AUTHORS

Pierre-Gilles Wogue

Partner
pgwogue@altanalaw.com

Julien Balensi

Partner
jbalensi@altanalaw.com

www.altanalaw.com