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Vive Le Restructuring: French Restructuring Plan Gets Overseas Approval and Enforcement in the U.S.

Client Advisories

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February 2, 2018 - On December 21, the Bankruptcy Court for the Southern District of New York recognized and agreed to enforce the unopposed foreign restructuring plan of oil exploration company C.G.G. S.A. ("C.G.G.," or the "Company") under Chapter 15 of the Bankruptcy Code. C.G.G.'s restructuring marks one of the few times a U.S. bankruptcy court has been asked to enforce a French court-sanctioned bankruptcy plan.

C.G.G.'s French Bankruptcy

C.G.G. is a nearly 90-year-old French company specializing in geophysical services. Its business comes predominantly from the Oil and Gas Exploration and Production ("E&P") industry. Like other companies in E&P, as oil and gas prices dropped, C.G.G.'s revenues dropped precipitously, from more than $3.4 billion in 2012 to $1.2 billion in 2016. C.G.G. simultaneously faced nearly $3 billion in funded indebtedness. C.G.G. initially divested non-core assets and reduced its headcount to save money, but soon determined that those measures were insufficient, and that restructuring was necessary. The Company initiated restructuring in France in February 2017. Negotiations with stakeholders eventually resulted in a June 2017 Lock-Up agreement, through which the company's shareholders agreed not to sell their shares. Negotiations also led to a restructuring support agreement that would swap nearly $2 billion in debt for most of the reorganized Company's equity.

C.G.G. simultaneously commenced insolvency proceedings in French court through a *sauvegarde*, or Safeguard proceeding, which halted debt payments, acceleration, and enforcement of securities against the company. C.G.G. then filed a Chapter 15 petition in the Southern District on June 14. Some of C.G.G.'s subsidiary companies also filed under Chapter 11. In July 2017, the New York court recognized the French case as a "foreign main proceeding" – occurring in the country of the debtors' "center of main interests," as described in section 1520 of

the Code, rather than a "nonmain proceeding," taking place in a country where the debtor only has an "establishment."

C.G.G. passed the restructuring agreement, called the Safeguard plan, with more than 90% of voting creditors approving. The French court accepted the plan via a "Sanctioning Order" on December 1.

On December 6, C.G.G., through its Foreign Representative, filed a new motion in the Southern District, requesting the court (a) give full force and effect to the Sanctioning order; (b) permanently enjoin actions against the Safeguard Plan within the U.S.; (c) declare securities given to the creditors under the plan (the "Safeguard Securities") exempt from Section 1145 registration; (d) authorize C.G.G.'s Foreign Representative to seek entry of a final decree to close the Chapter 15 case under Rule 5009(c); and (e) waive the 14-day stay of effectiveness for the order.

The Order

Bankruptcy Judge Martin Glenn granted the motion on all counts. The court first determined that the Sanctioning Order (the "Order") fell within "any appropriate relief," as required under section 1521(a)(7). The court cited the creditors' overwhelmingly support for the Safeguard Plan and reasoned that the plan's effectiveness, and the concurrent Chapter 11 cases, was conditioned on the court's acceptance of the Order.

The court then found that, as required under Section 1522, the interests of creditors and all interested parties in the case were "sufficiently protected." The court reasoned that, without the court's approval of the Order, the Plan might not be fully implemented. Further, the French court had already fully determined, after a hearing with interested parties, that the Safeguard plan gave sufficient protection. The court also agreed to permanently enjoin actions against the Safeguarding Plan.

The court also determined the Safeguard Securities were exempt from federal and state registration requirements. It found that section 1145, which allows exemptions from Securities laws, can be applied to Chapter 15 cases through sections 1507 and 1521 as long as the securities (a) were offered or sold under a plan; (b) were securities of the debtor or an affiliate in a joint plan; and (c) were sold in exchange for a claim against the debtor or affiliate, as per section 1145(a)(1). The court found that all three requirements were satisfied.

Last, the court found that, upon its order becoming final, section 350(a)'s requirements for closing a case were satisfied, and thus the case could be closed following the procedures of rule 5009(c). The court also waived the 14-day stay of effectiveness, in order to allow the restructuring to begin immediately.

Conclusion

The Southern District has frequently recognized and enforced foreign court orders in approval of a foreign debtor's restructuring plan – including recent plans from Hong Kong, Australia, Canada, the Caymans, and South Africa. But as Judge Glenn remarks in his opinion, French Safeguard plans have rarely been brought to U.S. bankruptcy courts for recognition and enforcement. The ruling suggests that French plans that are widely approved by creditors will receive a stamp of approval from the Southern District. It suggests moreover that the court will defer to the findings of French courts that have fully heard all parties to the restructuring on issues like section 1522 sufficient protection.

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