

June 28, 2018

## **FRENCH SUPREME COURT HOLDS THAT ULTIMATE CONTROLLING SHAREHOLDER OF A LIQUIDATED FRENCH SUBSIDIARY SHOULD COMPENSATE EMPLOYEES FOR JOB LOSS**

To Our Clients and Friends:

The French Supreme Court for civil law matters (*Cour de cassation*) made public on June 28, 2018 an important decision dated May 24, 2018. The Social Chamber (*Chambre sociale*) of the *Cour de cassation* decided that the ultimate controlling shareholder of a liquidated French subsidiary committed several faults justifying to condemn it to compensate the French employees for the loss of their jobs.

In early 2010, Lee Cooper France filed for bankruptcy and was ultimately liquidated. 74 employees were dismissed. 27 of these employees went to court to obtain that Sun Capital Partners Inc. be recognized as the co-employer of the dismissed employees. The former employees were also asking that Sun Capital Partners Inc. be condemned to pay damages as a consequence of its extra-contractual tortious liability having led to the loss of their jobs.

Sun Capital Partners Inc. was not found to be the co-employer of the French employees.

It was held, however, that it was tortiously liable to pay damages (of several tens of thousands dollars) to each of the dismissed employees to compensate them for the loss of their jobs.

The Court started by considering that Sun Capital Partners Inc. was the main shareholder of the "Lee Cooper group", holding Lee Cooper France via companies it controls. From the court decision, it appears that Lee Cooper France was 100% controlled by a Dutch company named Vivat Holding BV, itself 100% controlled by another Dutch company named Avatar BV, itself 100% controlled by another Dutch company named Lee Cooper Group SCA, itself controlled by Sun Capital Partners Inc.

The issue raised by the Court is that Lee Cooper France financed the "group" for amounts disproportionate with its means. Examples are as follows:

- the right to use the trademark "Lee Cooper" was transferred for no consideration to a company named "Doserno", which was 100% controlled by Lee Cooper Group SCA which subsequently charged royalties for the use of the "Lee Cooper" trademark by Lee Cooper France;
- Lee Cooper France granted a mortgage over a building it owned to secure a bank loan to the exclusive benefit of another subsidiary of the group. The building was subsequently sold to the benefit of the lenders;

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- an inventory of goods to be resold was given as a security to lenders and then sold to Lee Cooper France which was then opposed the lenders' retention right; and
- services performed for other entities of the group were only partially paid for.

Although Sun Capital Partners Inc. was "isolated" from Lee Cooper France by four layers of corporate entities having the status of limited liability corporations, Sun Capital Partners Inc. was held liable for having "*via the companies of the group, made detrimental decisions in its sole shareholder interest which led to the liquidation of Lee Cooper France.*"

The decision, which does not involve any piercing of the corporate veil, is based only on theories of tortious liability, the various entities of the group of companies controlled by Sun Capital Partners Inc. being treated as mere instruments for the commission of these faults by the controlling shareholders.

This decision is a reminder that intra-group transactions involving French entities need to be carefully reviewed to ensure the existence of a corporate interest for the French entity.



*Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding the issues discussed in this update. For further information, please contact the Gibson Dunn lawyer with whom you usually work or any of the following members of the Paris office by phone (+33 1 56 43 13 00) or by email (see below):*

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