

Commercial judgment No 2024TALCH02/00194

Public hearing of Wednesday, February 7th, two thousand and twenty-four at 9 a.m.

Roll number: TAL-2024-00910

Number L-14841/24

Composition:

Anick WOLFF, 1st Vice President;
Marlene MULLER, judge;
Tania CARDOSO, judge;
Paul BRACHMOND, clerk.

[Signature] *[Signature]*

Between:

the COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER, abbreviated CSSF, a public institution, established at L-1150 Luxembourg, 283, route d'Arlon, represented by its management currently in office,

petitioner for dissolution and liquidation of the limited liability company EAST-WEST UNITED BANK SA, established and having its registered office at L-1840 Luxembourg, 10, boulevard Joseph II, under the terms of a petition filed on January 30, 2024,

appearing on behalf of Mrs. Eglantine FLORI, residing professionally at L-1150 Luxembourg, 283, route d'Arlon,

and:

the public limited company **EAST-WEST UNITED BANK SA**, established and having its registered office at L- 1840 Luxembourg, 10, boulevard Joseph II, registered with the Luxembourg Trade and Companies Register under number B12049, represented by its Board of Directors currently in office, currently eligible for the deferment of payment,

defendant for the purposes of the aforementioned motion,

appearing on behalf of the limited liability company ELVINGER HOSS PRUSSEN SA, established and having its registered office at L-1340 Luxembourg, 2, place Winston Churchill, represented in the present proceedings by Pierre ELVINGER, attorney-at-law, assisted by André HOFFMANN, attorney-at-law, both residing in Luxembourg,

present:

the State Prosecutor of Luxembourg, at the District Court of and in Luxembourg,

represented by 1st substitute Pascal COLAS.

FAITS :

By a petition filed on January 30, 2024, hereinafter attached, the Commission de Surveillance du Secteur Financier has requested the dissolution and liquidation of the defendant company EAST-WEST UNITED BANK SA.

The motion was served on the defendant by bailiff on January 30, 2024.

The Commission de Surveillance du Secteur Financier (Financial Sector Supervisory Commission) and EAST-WEST UNITED BANK SA were summoned to appear in chambers on February¹, 2024 at 3:00 p.m., in the presence of the Public Ministry, at which hearing the proceedings took place as follows:

Mrs. Eglantine FLORI, CSSF advisor, read out the petition for dissolution and liquidation of the public limited company EAST-WEST UNITED BANK SA and set out her arguments.

The defendant, EAST-WEST UNITED BANK SA, appeared through its representative, Pierre ELVINGER, attorney at law, who set out his case.

The representative of the Public Ministry was heard in his conclusions.

Thereupon, the court took the case under advisement and rendered at the public hearing of February 7, 2024, at 9:00 a.m. the following decision

The following judgment:

Facts

EAST-WEST UNITED BANK SA (hereinafter also referred to as the "Establishment") is a universal bank founded on June 12, 1974, with no subsidiaries or branches.

Its sole shareholder is the Russian company Sistema Joint Stock Financial Corporation (hereinafter "Sistema"), whose main economic beneficiary is Vladimir Evtushenkov, a Russian national.

EAST-WEST UNITED BANK provides banking services for individuals and businesses, with a particular focus on Russian entrepreneurs.

Its three core businesses are private banking, transaction banking and corporate and investment banking.

Until December 2023, the Bank's business lines included deposit-taking, *direct banking*, lending, asset management, securities and foreign exchange transactions, and trade finance.

Since the outbreak of war in Ukraine in February 2022, the Establishment's activities and business have been heavily impacted by the geopolitical context, particularly as a result of the sanctions imposed on Russia.

The company scaled back its business activities and monetized its assets to meet its obligations to creditors, but realized that there was no prospect of returning to a normal, sustainable situation within a reasonable time frame.

Accordingly, the General Meeting of Shareholders held on July 28, 2023, mandated the Board of Directors to put an irrevocable and orderly end to the Establishment's residual activities, in order to give its approval in due and proper form at the end of operations.

On November 2, 2023, EAST-WEST UNITED BANK and its sole shareholder Sistema were designated as sanctioned persons by the *Office of Foreign Assets Control* (hereinafter "OFAC") under sanctions imposed by the United States of America against Russia pursuant to Executive Order 14024.

The OFAC has issued a general license number 74 (hereinafter the "General License") which allows only non-blocked third parties to terminate existing transactions with the Establishment until January 31, 2023 (hereinafter the "Grace Period").

The General License does not cover any new transactions related to the liquidation of the Establishment itself.

In addition, the General License specifically states that all payments made to the Establishment by US persons must be made to a blocked account.

The General License may not be used to collect payments due to the Establishment from U.S. persons.

Although U.S. sanctions apply only to U.S. persons, in practice most European credit institutions and companies comply with U.S. sanctions.

While the bank has been able to continue the process of winding down its activities while meeting all regulatory capital and liquidity requirements, it has faced severe operational obstacles in executing payments or maintaining commercial relations with the third-party service providers it is obliged to use as part of its regulated activity.

On November 6, 2023, the Establishment notified the Commission de Surveillance du Secteur Financier (hereinafter the "CSSF"), as supervisory authority, in accordance with Article 81 paragraph ¹ of the amended Act of December 18, 2015, on measures for the resolution, reorganization and liquidation of credit institutions and certain investment firms as well as deposit guarantee and investor compensation schemes (hereinafter the "2015 Act"), that its default is proven or foreseeable.

On November 13, 2023, the CSSF, in its capacity as supervisory authority, pointed out the inconsistency between the notification of default and the statement made in the body of the notification that the default situation was neither proven nor foreseeable.

From November 24, 2023, the CSSF, in its capacity as supervisory authority, will be monitoring the company even more closely.

On November 28, 2023, Banque Internationale á Luxembourg SA (hereinafter "BIL"), provider of the SWIFT network access service, notified the Establishment of its intention to terminate this service on January 31, 2024.

On January 5, 2023, the Board of Directors of EAST-WEST UNITED BANK unanimously deemed the institution's failure to meet its operational obligations to be proven or foreseeable.

On the same day, the Establishment once again notified the CSSF, in its capacity as supervisory authority, that its default was actual or foreseeable.

On January 12, 2024, the CSSF, as supervisory authority, has, in accordance with Article 33

paragraph¹ of the 2015 Law, notified its draft assessment in accordance with Article 33 paragraph 3 of the 2015 Law, on the materiality of the proven or foreseeable failure of the Establishment to the CSSF, as resolution authority, for consultation.

On January 16, 2024, the Establishment completed its notification.

On January 17, 2024, the CSSF, as resolution authority, gave its formal favorable response to the CSSF, as supervisory authority, on the draft valuation.

On January 18, 2024, the CSSF, as supervisory authority, concluded that the failure of the Establishment is proven or foreseeable in the near future, in accordance with Article 33 paragraph 3, points 1 and 3 of the 2015 Law, and communicated to the CSSF, as resolution authority, its final assessment.

On January 19, 2024, the CSSF's Resolution Board, exercising the powers conferred by Article 33 of the 2015 Act, carried out an assessment of the materiality of the conditions for triggering a resolution procedure in respect of the Establishment.

In a decision dated January 19, the CSSF, as resolution authority, finds that the conditions laid down in Article 33 paragraph¹ points 1 and 2 of the 2015 Law are met, but that a resolution measure is not necessary in the public interest, in accordance with Article 33 paragraph¹ point 3 of the 2015 Law and that the conditions for triggering a resolution procedure in respect of the Establishment are not met. It has also decided to request the liquidation of the company.

On January 19, 2024, the CSSF, as resolution authority, in accordance with Article 7 paragraph 3, subparagraph 5 of Regulation (EU) No. 806/2014, notified the Single Resolution Board of the decision that the conditions for triggering a resolution procedure in respect of the Establishment have not been met, and that it must therefore request, in accordance with Article 33-2 of the 2015 Act, the court that the Establishment be put into liquidation under a normal insolvency procedure.

On January 29, 2024, the Conseil de Résolution Unique (Single Resolution Council), the CSSF's supervisory authority as Luxembourg resolution authority, decided not to issue an opinion on the Luxembourg resolution authority's decision of January 19, 2024.

Procedure

By petition filed on January 30, 2024, at 8:20 a.m. with the clerk's office of the district court of and in Luxembourg, the CSSF has requested, principally, that the dissolution and liquidation of EAST-WEST UNITED BANK be ordered on the basis of Articles 129 et seq. of the 2015 Law and, subsidiarily, that it be admitted to the suspension of payments procedure as provided for in Part II, Title II of the 2015 Law.

The petition was served on EAST-WEST UNITED BANK by bailiff Geoffrey GALLE on January 30, 2024.

Claims and pleas of the parties

The CSSF states that the company still holds its banking license and that no suspension of payment has been granted against it, but that its financial situation has been undermined to such an extent that it will no longer be able to meet its commitments to all holders of debt or participation rights.

Thus, the imposition of US sanctions would lead to serious operational difficulties, effectively and unquestionably jeopardizing the long-term viability of the company.

Thus, it would have encountered difficulties in executing payments from November 28, 2023, compromising all operations permitted following the sanction provided for in the General License, although US sanctions apply only to US persons.

The difficulties materialize through a technical difficulty linked to payment infrastructures and systems, leading to operational difficulties.

Since BIL's decision to stop providing the SWIFT service by January 31, 2024, the bank has only been able to make euro payments on the accounts of beneficiaries with direct or indirect access to the T2 payment system (in principle banks in the European Union), thus severely restricting the bank's activity.

What's more, many European banks would no longer accept payments from the Establishment, despite the use of the T2 system, due to internal counterparty risk policies.

As a result, the salaries of the 41 employees could no longer be paid after January 31, 2024.

Despite the steps taken to obtain access to the SWIFT system after January 31, 2024, and the possibility of obtaining such access via the cloud provider SWIFT Alliance, the situation would be extremely precarious and uncertain.

The CSSF therefore notes a real risk that all of the institution's payments will go unpaid.

The situation would also affect securities deposited with EAST-WEST UNITED BANK, while Euroclear, the corresponding bank for the settlement of securities transactions, has been rejecting or taking a considerable amount of time to execute the Establishment's transactions since December 29, 2023.

The CSSF, in its capacity as resolution authority, notes that the bank remains compliant with its capital adequacy and liquidity requirements, and that there are no objective indications that it will breach these obligations in the near future.

However, objective evidence suggests that, due to operational difficulties, the Establishment would be unable to pay all its debts as they fall due by January 31, 2024, and that it would no longer have the operational capacity to carry out its activities subject to approval.

The Board of Directors would also have resigned with effect from January 31, 2024.

The difficulties faced by the company are said to be insurmountable, with many payments, including salaries, still outstanding.

Given the systematic nature of non-execution of payments before February 1, 2024, it would be certain that all obligations and commitments would not be fulfilled, even if new access to the SWIFT system could be guaranteed.

The situation would also be irremediable, since a lifting of the sanctions against the company and its shareholder would be inconceivable in the short term, or even in the medium to long term, and a moratorium on payments by the company would merely postpone liquidation, in that a buyer would be subject to the same sanctions.

The conditions for liquidation would therefore be met.

In the alternative, the CSSF is requesting that the Company be admitted to the suspension of payments, given that, in the light of the situation described above, the Company's commitments

would be compromised, so that it would have to be accepted that its credit would be undermined or that it would find itself in a liquidity impasse, whether or not there is a cessation of payments.

EAST-WEST UNITED BANK agrees with the CSSF's view that liquidation is the only solution, even though the situation has been completely deadlocked since February 1, 2024. She would have the funds to pay off all her debts, but would no longer be able to make any payments.

The appointment of a liquidator would enable him to take the necessary steps to unblock the situation and make the necessary payments, including wages.

It considers that the deferred payment procedure would not resolve the current stalemate.

The Public Ministry representative supported the CSSF's request.

Assessment

Under section 129(1) of the 2015 Act *"Dissolution and liquidation may take place when: [...] 2. the establishment's financial situation has been undermined to such an extent that it will no longer be able to meet its commitments to all holders of debt or equity interests; [...]"*.

It is clear from the statements made by the parties that, although EAST-WEST UNITED BANK's financial position and liquidity are sound, it is faced with an insurmountable and irremediable situation as a result of the OFAC sanctions imposed on it and its sole shareholder, a situation which prevents it from meeting its commitments.

It must be concluded that the conditions of article 129 paragraph 1 are fulfilled, so that EAST-WEST UNITED BANK must be dissolved and liquidated.

Liquidation terms

Article 129 (7) of the amended 2015 Act provides that *"[i]n ordering the liquidation, the Court shall appoint a judge commissary and one or more liquidators. It determines the liquidation method. It may apply, to the extent it determines, the rules governing bankruptcy. In this case, it may fix the time of cessation of payment at a date no more than six months prior to the lodging of the application referred to in Article 122(3). The liquidation method may be changed at a later date, either ex officio or at the request of the liquidators or the CSSF"*.

It is therefore advisable to appoint a judge commissary, who has the most extensive right of inspection and information.

It is also appropriate to appoint a liquidator who will carry out his mission in accordance with the terms and conditions set out above.

The creditors of EAST-WEST UNITED BANK must, under penalty of foreclosure, file their claims with the clerk's office of the district court of and in Luxembourg, second chamber, by 5:00 p.m. on July 7, 2024, at the latest.

Claims will be verified, admitted and contested in accordance with the rules set out in the operative part of this judgment.

Conversion of receivables denominated in currencies other than the euro

Claims denominated in a currency other than the euro will be converted into that currency at the exchange rate prevailing on the date of this liquidation decree as published by the European Central

Bank, and payment of all admitted claims will be made in euros.

Provisional execution

Pursuant to section 129(9) of the Amended Law of 2015, this judgment is enforceable provisionally and without surety.

Publication

Article 129(12) paragraph 1 of the amended law of 2015 stipulates that *“Within eight days of its pronouncement, the judgment pronouncing the dissolution and ordering the liquidation of an establishment and appointing a judge commissary and one or more liquidators, as well as amending judgments, are published by extract at the expense of the establishment and at the diligence of the liquidators in the Recueil électronique des sociétés et associations (Electronic register of companies and associations), in accordance with the provisions of Chapter Vbis of Title I of the amended law of December 19, 2002, concerning the register of commerce and companies and the accounting and annual accounts of companies, and in at least two Luxembourg newspapers or one foreign newspaper with adequate circulation, designated by the Court”*.

It is appropriate to order the publication of this judgment, within eight days of its pronouncement, by extract, and at the liquidator’s expense, in the newspapers “Luxemburger Wort”, “Tageblatt”, “Financial Times” and “Kommersant”.

M o t i f i c p a r c e s :

the tribunal d’arrondissement de et á Luxembourg (district court of and in Luxembourg), second section, sitting in commercial matters, ruling in open court, after having heard in chambers the representatives of the Commission de Surveillance du Secteur Financier, the representative of EAST-WEST UNITED BANK SA and the representative of the Public Prosecutor’s Office in their submissions,

declared the claim admissible and well founded,

pronounces the dissolution and orders the liquidation of the limited liability company EAST WEST-UNITED BANK SA, established and having its registered office in L-2449 Luxembourg, 26A, Boulevard Royal,

appoints Mrs. Anick WOLFF, First Vice-President of the Tribunal d’arrondissement de and á Luxembourg, as bankruptcy judge,

appoints Alain RUKAVINA, attorney-at-law, residing professionally at L-1142 Luxembourg, 9, rue Pierre d’Aspelt, as liquidator,

states that the liquidator represents both the company and its creditors and is vested with the broadest powers to achieve his objective, which he will exercise both in the Grand Duchy of Luxembourg and abroad;

declares that the liquidation of the limited liability company EAST-WEST UNITED BANK SA will be carried out in accordance with article 129 of the amended law of December 18, 2015, relating to measures for the resolution, reorganization and liquidation of credit institutions and certain investment firms, as well as deposit guarantee and investor compensation schemes, and articles 1100-1 (1), 1100-4, 1100-6, 1100-8 and 1100-13 of the amended law of August 10, 1915, concerning

commercial companies, as well as articles 448, 450, 451, 452, 453, 454, 462, 463, 464, 465.1°, 3° and 5°, 487, 492, 528, 542, 543, 544, 548, 549, 550, 551, 552, 567-1 and 572 of the French Commercial Code;

subject to the following exceptions:

Known creditors residing abroad are informed by the liquidator of the judgment pronouncing the dissolution and liquidation of the limited liability company EAST-WEST UNITED BANK SA, in accordance with the provisions of article 133 of the amended law of December 18, 2015;

Claims will be filed in accordance with article 134 of the same law;

The deadline for filing claims is July 7, 2024, 5:00 p.m., under penalty of foreclosure;

Claims are verified by the liquidator as and when claims are filed; they enter on lists the claims they deem eligible; each eligible claim is identified by the identity of its holder, its amount and cause, as well as its preferential or unsecured nature; the liquidator draws up lists on which disputed claims are entered;

The liquidator reports to the official receiver on their verification operations, and submits draft lists of eligible and disputed claims;

Throughout the month of October 2024, the lists of eligible claims are filed with the clerk's office of the second chamber of the Tribunal d'Arrondissement de Luxembourg (Luxembourg district court), where they may be inspected by declared creditors and those listed on the balance sheet;

During the same month, the same persons may lodge a counterclaim against the claims appearing on the aforementioned lists; the counterclaim is lodged by a declaration to the clerk's office; a note thereof is made by the clerk on the list in question, in the margin of the disputed claim; the note bears the date of the counterclaim and the identity of its author and, where applicable, of the agent lodging the counterclaim declaration; the objection must be reiterated, on pain of inadmissibility, within three days, by registered letter addressed to the liquidator; it must contain, on pain of inadmissibility, the exact qualities of the author of the objection, election of domicile in the municipality of Luxembourg, the justifications concerning his quality, as well as the means and documents invoked in support of the objection;

The admissibility and merits of the objection are summarily checked by the liquidator;

After expiry of the October 31, 2024, deadline for lodging objections, the claims declared admissible and not contested are definitively admitted in the minutes signed by the liquidator and the official receiver;

The liquidator will validly inform creditors whose claims have been contested or are the subject of an admissible and not unfounded objection, of the contested nature of their claim or of the existence of an objection, by registered letter to the address of the domiciliary, if not to the address of the foreign agent, if not to the address indicated in the claim declaration, if not to their last known address;

Failure by these creditors to proceed by way of summons within a period of 40 (forty) days from the date of mailing of this registered letter, the statement of claim in question shall be deemed to have been definitively rejected;

The liquidator will likewise inform any counter claimants whose counterclaim appears to him to be inadmissible or unfounded, of the contested nature of their counterclaim by registered letter to their elected domicile;

If the counter claimant fails to proceed by way of summons within a period of 40 (forty) days from the date of mailing of this registered letter, his counterclaim shall be deemed non-existent and the claim declared admitted;

Disputes that cannot be settled immediately are disjoined;

Those that do not fall within the jurisdiction of the Luxembourg District Court, sitting in commercial matters, are referred to the competent court;

*No opposition will be lodged against judgments ruling on disputes and contradictions;
Creditors whose claims have been accepted are informed individually by simple letter from the liquidator;*

states that receivables denominated in a currency other than the euro will be converted into that currency at the exchange rate on the day of the liquidation judgment as published by the European Central Bank, and payment of all admitted receivables will be made in euros;

orders the publication of this judgment by extract in the “Recueil électronique des sociétés et associations (Electronic register of companies and associations)” and in the newspapers “Luxemburger Wort”, “Tageblatt”, “Financial Times” and “Kommersant”;

declares that the present judgment is provisionally enforceable, notwithstanding any recourse, on the minute, before registration and without security;

charges the costs to be by the limited company EAST-WEST UNITED BANK SA.

[Signature] [Signature]