judgments have a retroactive effect, since any change in case law reveals the true meaning of law *ab initio*.

Judgments nos. 8 & 9/1998 of the High Court of Greece, published in the Bulletin of Companies and Corporations 1998, p 177

De Facto Company – Lifting the Corporate Veil

Corporate Personality – Lifting the Corporate Veil

In judgment no. 543/1998 of the First Instance Court of Piraeus, the Court considered an interlocutory measures application against a Liberian *société anonyme* and its sole shareholder.

The application was for the provisional seizure of real estate belonging to the company as security for debts of the shareholder created in the course of the company's business. The case in question had two original elements:

(1) The defendant company was a foreign company having its real seat in Greece; and

(2) The lifting of the corporate veil was sought in order to implicate the company rather than the sole shareholder.

In its ruling the Court noted that a foreign company is considered Greek if it has its real seat in Greece, even though the seat, according to its articles of association, is situated abroad. Such a foreign *société anonyme*, which has not complied with the rules of law 2190/20 (as amended) on the establishment of *sociétés anonymes*, is further considered a *de facto* personal company. In this case, third parties interests are safeguarded as the members of the company are considered personally liable for the debts of the company.

The application in question was finally rejected on the following grounds: the possession of the totality or the majority of the shares of a company, thus the control of a company, by one single person, in combination with the exercise of the administration of the company by that specific person, are not adequate conditions for the corporate veil of the company to be lifted and thus for the shareholder to be held liable to the company's creditors. It is further necessary that the existence of the company itself aims to violate the legal rules and provisions on companies, thus rendering the invocation of the company's separate legal personality by the shareholder abusive.

Judgment no. 543/1998 of the Single Judge First Instance Court of Piraeus, published in the Bulletin of Companies and Corporations 1998, p 715

Angeliki Delicostopoulou
A & A Delicostopoulou
Athens

Malta

Case Law

Amalgamation Declared Null

Corporate Personality – Striking Off

An amalgamation of companies was judicially declared null. The question was whether the Registrar should restore to the register the company struck off in virtue of the amalgamation? The court decided that striking off was irreversible, despite the eventual annulment of the amalgamation.

In 1976, Marsascala Development Ltd sold part of a parcel of land it owned to the defendant company. Eventually a dispute arose with the defendant, which allegedly erected constructions over adjacent land still retained by Marsascala. In 1979, the latter commenced judicial proceedings for compensation.

Between 1981 and 1982, in terms of the enabling provisions in the Commercial Partnerships Ordinance 1962 (Ch 168 of the Laws of Malta), Marsascala was by way of amalgamation merged into Santumas Shareholding Ltd, which was practically its sole shareholder. The Registrar of Partnerships duly registered the amalgamation. As a consequence of the amalgamation, Marsascala was struck off the register.

The court case was therefore continued in the name of Santumas. The defendant pleaded that the amalgamation was null because one of the documents required by the Ordinance had not been registered, and that the plaintiff company, having been struck off, was non-suited once it no longer existed.

The Commercial Court rejected the defendant's claims. But in 1988, the Court of Appeal reversed the decision and upheld the defendant company's plea that the amalgamation was procedurally deficient and consequently null, and that the plaintiff was non-suited. The Court held that the Registrar of Companies had wrongly registered the amalgamation.

Following this judgment, the Registrar published a note in the Gazette notifying the cancellation of the amalgamation, and proceeded to restore the two companies to the state they were in prior to the aborted amalgamation. This process included the restoration of Marsascala to the register. In 1989, the amalgamation of the two companies was once again executed, this time in strict compliance with the statutory requirements. Santumas then instituted fresh court proceedings against the defendant.

Once again the defendant argued that the amalgamation was null because having been officially struck off, Marsascala was henceforth to be considered as irretrievably 'dead' for all purposes and

so could not be party to an amalgamation, and further that the Registrar was wrong in reinstating it to the register.

Judgment was given in this second case on 29 October 1998. The Court has re-affirmed that the plaintiff had no *locus standi*. It decided that once Marsascala had been struck off upon its amalgamation with the plaintiff company, 'it no longer existed and so could not in any manner be revived.' The company could not be a party to another amalgamation process and it could not have been struck off a second time. It was also decided that the Registrar had no power to revive Marsascala, and that 'the alleged amalgamation of December 1989 was consequently null and without effect at law'.

Additionally, the Court also rejected the plaintiff's reasoning that the defendant should not have been allowed to attack the Registrar's actions by way of a defence plea in proceedings to which the latter was not a party, and that the defendant should have instituted separate *ad hoc* proceedings for that purpose.

Santumas has entered an appeal. Defending the validity of the second amalgamation, the appeal petition suggests that the court's findings that Marsascala had been irretrievably extinguished in 1982 and that the second amalgamation in 1989 was null lead to the 'unreal' conclusion that the property formerly held by this company now has no owner, ie that it is a '*res nullius* at everybody's disposal'. It supports the Registrar's decision to restore the two companies to their *status quo antem* upon the judicial annulment of the first attempted amalgamation. The appeal petition insists that in order to attack an action taken by the Registrar, the defendant should be required to initiate apposite proceedings against the Registrar within a time limit to be established by the Court.

Santumas Shareholding Limited v Libyan Arab Foreign Investment Company, Civil Court on 29 October 1998.

(Note: Both the facts and the legal issues involved in this rather convoluted case have been substantially simplified and brought within manageable limits for the purpose of this present note. Most of the problems that arose in this case have now been resolved by the Companies Act 1995, which came into force on the 1 January 1996).

David Fabri
Malta Financial Services Centre

Portugal

Civil Code Amendments to Reflect the Introduction of the New European Currency

Borrowing, Credit and Security; Dealings with a Company; Shares

Decree-law 343/98 of the 6 November effected the principal alterations to the Portuguese legal structure to reflect the introduction of the new European currency, the euro (€). The amendments were aimed at adapting the existing legislation to the new currency, leaving untouched the fundamental concepts and specifics of the various legal frameworks. This Decree Law is effective as of 1 January 1999.

First, amendments were made to the dispositions of the Portuguese Civil Code that regulate the execution of pecuniary obligations in foreign currency. Article 558 of the Civil Code, as amended, now reads that the execution of obligations set out 'in any currency circulating only abroad', can now be made in the Portuguese currency. The original reading of the Article stipulated the execution of obligations ' in foreign currency'.

The dispositions of Art 1143 of the Civil Code defining the legal requirements to be observed in the signature of loan contracts have been equally amended in order to reflect the introduction of the use of the euro. The law previously stipulated that: 'Loans of more than PTE 3m (US$17,300) are valid only, if done by notarial deed.'

It now says that: 'Loans of more than €20,000 (US$23,100) are valid only if done by notarial deed.' In the same Article, in place of: 'Loans of more than PTE 200,000 are to be validly constituted must be documented and signed by the borrower;' the law now provides that: 'Loans of more than €2,000 are to be validly constituted must be documented and signed by the borrower'.

Finally, amendments to Art 1239 also reflect the introduction of the European currency when regulating the transfer of the right to income for life, and stipulating that the same must be reflected in a notarial deed if it relates to a right or an asset worth more than €20,000 instead of PTE 3000,000.

The Companies Code has also been extensively amended to reflect the introduction of the new currency. The amended Art 14 of the Companies Code now stipulates that the share capital of the different types of companies will be expressed not '.... In Portuguese currency...' but ' in any currency circulating in Portugal'.