

~~These amendments shall come into effect on the day the Republic of Croatia shall be accepted into the membership of the World Trade Organisation.~~

~~Mladen Dragicevic  
Zagreb~~

## ~~Denmark~~

### ~~Distributions and The Maintenance of Capital – Financial Assistance for Purchase of Own Shares; Company Insolvency and Liquidation – Liability for Fraudulent Trading, Misfeasance Proceedings~~

~~In the High Court Eastern Division, a limited company was held to have assisted financially in the acquisition of its own shares where the purchase monies were effectively paid out of corporate funds. In addition, the vendors were held liable for the loss suffered by the Inland Revenue as a result of the company's failure to pay corporation taxes and its subsequent insolvency. The vendors were held to have acted recklessly and to have failed to observe a duty of care owed to the creditors as a whole (of which the Inland Revenue constituted the majority).~~

~~Juridisk Ugebrev 1988/588 OLD, TfS 1998/519 OLD~~

~~Peter Sinding  
Garretts~~

## ~~Germany~~

### ~~The 'Limitation of the Liability of Minors' Act 1998 (Minderjährigen haftungsbeschränkungsgesetz (MHbeG))~~

#### ~~Corporate Officers and Promoters – Liability of Minors, Minors in Partnerships~~

~~The current position under German law is that a minor who engages in legal transactions with parental consent or through his parents acting as his legal representatives (possibly with the participation of the court of guardianship) will be liable with all his assets.~~

~~This is no longer the case under the MHbeG entering into force on 1 January 1999. Liability for obligations undertaken by a minor will be limited to the assets held by the minor when he reaches his majority. The minor's creditors have no claims to assets acquired by the minor on his own after that date. The parents can generally not be held liable in the minor's place.~~

~~In addition, on coming of age, the minor is entitled to withdraw from any partnership that he is a partner of (cf. s 723(1)(para 2) of the Bürgerliches Gesetzbuch ('BGB') as amended by the MHbeG). If~~

~~he does not invoke this right or continues to carry on a trade as a proprietor, but simultaneously claims a limitation of his liability under the MHbeG, it becomes necessary to differentiate between old and new obligations. Section 1629a(4) of the BGB (as amended by the MHbeG) is intended to resolve this problem (presumption for 'new obligation' after three months past the 18th birthday). Correspondingly, the date of birth of a natural person has to be entered into the commercial registry according to the HRefG (cf. September 1998 issue of ICLB, p.13). The MHbeG has its roots in a decision of the German Constitutional Court (cf. Decisions of the Court ('Entscheidungen des Bundesverfassungsgerichts'), vol 72, p 155). The court held that a minor's personal right demands that he has to be enabled to design his future life without being hindered by obligations for which he is not responsible.~~

~~Minderjährigenhaftungsbeschränkungsgesetz (MHbeG) of 25 August 1998, Bundesgesetzblatt (BGBl.) I, 2487~~

~~Friedrich Wenzel Bulst, University of Heidelberg  
& Referendar Ralph Nack,  
Max Planck Institute, Munich~~

## ~~Malta~~

### ~~Resuscitation of a Company Which Has Been Dissolved and Struck Off~~

#### ~~Company Insolvency and Liquidation~~

~~An interesting company law issue has arisen in a recent case heard before the Maltese Civil Court. The point relates to the possibility of resuscitating a company which has been dissolved and struck off. Maltese company law has no provision similar to s 651 of the English Companies Act 1985, and is silent on the possible revivification of a company. There has been no judicial precedent on the matter.~~

~~Briefly, the facts are as follows:~~

~~Fond Ghadir Limited was incorporated in 1976. It was eventually dissolved and its affairs were wound up; in 1978 it was struck off by the Registrar of Companies. The company was solvent and the remaining assets were distributed to the shareholders.~~

~~In 1998, the former shareholders of the company discovered that a particular asset had not been taken into account in the liquidation accounts and the scheme of distribution. The asset consisted of a real right (consisting of the airspace) over property still recorded at the Public Registry in the company's name.~~

~~The shareholders instituted a court case against the liquidator and the Registrar of Companies requesting they reinstate it on the official register in~~

order to enable the asset to be taken into account into revised final liquidation accounts and scheme of distribution. The liquidator admitted his oversight, and the parties agreed that the evidence pointed to a genuine mistake on his part.

The Registrar has not contested plaintiffs' request, but is requesting the Court to establish parameters for future cases with a view to safeguarding the interests of third parties, and the certainty of a company's status to avoid encouraging careless liquidators. The Registrar is of the view that a revival should be allowed only exceptionally where no other remedy is available. He has asked the Court to specifically restrict the reinstatement of the company for such period of time as is strictly necessary to achieve the sole objective of rectifying the deficiency identified in the proceedings.

Clearly, the Registrar would have taken a different view in the present case had the asset in question been a mere monetary debt.

There may be a difficulty regarding the time factor. Throughout its lifetime between 1976 and 1979 the company was governed by the Commercial Partnership Ordinance of 1962. This law has in the intervening years been repealed and replaced by the Companies Act of 1985, under which the rules relating to liquidators and winding up have been radically altered. One difficulty that may arise is determining which law should regulate the revival of a company in such cases.

Note: In Maltese law, a company is first dissolved (by the shareholders or by the court) and then goes into the process of winding-up, during which its assets are liquidated, creditors are paid, etc. When the liquidator completes his job of winding up the company and finalises the final accounts and scheme of distribution, if any, then the Registrar of Companies would proceed to strike the company off his register. At that moment the juridical personality of the company ends. This is contrary to the English system, where the company is wound up prior to the dissolution.

(*Mayflower Property Co. Ltd. and Ghar Kaukla Limited v The Registrar of Companies and G. Depasquale, former liquidator of Fond Ghadir Limited*, Civil Court cit. nru. 2813/97 NA. At the last sitting, held in September, the case was deferred to December for judgment.)

David Fabri  
Malta Financial Services Commission

## Ukraine

### Proposed New Bankruptcy Legislation

#### *Company Insolvency and Liquidation*

Ukraine's government has submitted a bill to Parliament designed to simplify the ex-Soviet Republic's contorted bankruptcy legislation. The Bill will be debated by the end of October and is designed to significantly speed up the process of structural reform in the economy. The Bill is part of Ukraine's overall economic reforms, which are being endangered by the situation in Russia. The Ukrainian currency, the hryvnia, has fallen to 3.4240 to the US Dollar (from 2.25 to the Dollar at the start of September).

## UK - England and Wales

### Court Permits Continuance as Director in Spite of Ban

#### *Directors' Duties*

The circumstances under which a court will permit a disqualified director to continue to exercise that role were outlined by the Court after it allowed a director to continue with three existing directorships, despite being disqualified for a period of four years.

The basic rule is that the reasons for granting leave to continue must be consistent with the reasons for the disqualification. The danger to the public must be balanced against the need for the individual to continue as a director of a specific company. Where the individual had not acted dishonestly, but had carried out his role inadequately, the courts should only apply this criterion.

Here, the roles the individual played on the boards in question were such that the inadequate performance of responsibilities would not have any possibility of recurring and he had no executive powers. The Court granted leave to continue as a director on the provisos that he remained a non-executive, that he did not enter into any contract of employment and that his directorship remained unpaid.

*Secretary of State for Trade and Industry v Baker* (Chancery Division, 29 September 1998).

### Receiver Sale Voidable Without Shareholder Approval

#### *Shareholders; Company Insolvency and Liquidation*

A court was recently asked to decide whether the sale of a business by a receiver to a company controlled