

## **Limitations of Set-Off in Liquidation Proceedings**

**In a 2025 ruling, the Curia reaffirmed that different rules apply to set-offs in liquidation proceedings depending on whether the claim was acquired through assignment or if the original creditor seeks to settle their outstanding debt with the debtor in this manner.**

The general rule governing set-offs in liquidation proceedings is that a creditor may only exercise their right to set-off if the claim has been acknowledged and registered by the liquidator and has not been assigned after the court received the petition for the liquidation process.

This means that a claim acquired through assignment before the submission of the liquidation petition may be set off. However, if the assignment occurred after the petition was filed, the successor in title can no longer exercise the right to set off.

This provision of the Bankruptcy Act prohibits set-offs based on changes in entitlement after the commencement of liquidation to prevent the circumvention of the order of satisfaction of claims.

**In the specific legal case, the question arose whether a creditor who acquired a claim during the debtor's prior bankruptcy proceedings could exercise the right to set off.**

The creditor seeking to apply the set-off argued that at the time of acquiring the claims, no liquidation petition had yet been filed.

The Curia has previously interpreted in several rulings the relationship between bankruptcy proceedings—which serve as a pre-liquidation insolvency process—and the liquidation proceedings that automatically follow if the bankruptcy attempt fails.

Through a teleological interpretation of the law, the Curia emphasized that bankruptcy proceedings aim to avoid liquidation; if unsuccessful, liquidation commences automatically, independent of the parties' intentions.

Accordingly, bankruptcy and liquidation proceedings should be treated as a unified process, and the filing of a bankruptcy petition has the same legal consequences regarding deadlines as filing a liquidation petition.

In the specific case, the creditor intended to offset the purchase price of assets acquired from the debtor by means of claims obtained through assignment after the initiation of bankruptcy proceedings. The Curia ruled that this set-off did not extinguish the creditor's payment obligation towards the debtor, meaning the set-off was not permissible.

**If you or any of your partner companies are involved in liquidation or bankruptcy proceedings and find it challenging to navigate the related rights and obligations, our law firm's specialists in insolvency and liquidation procedures are prepared to assist you!**