Communication concerning the decision of the Curia of Hungary
in civil case n° Gfv.VII.30.255/2014

The borrower group of companies was granted a loan by several banks via a joint financing scheme. The loan was secured by a pledge in favour of the banks as pledge holders on the assets – including the bank accounts – of the members of the group of companies that became pledge debtors. Between 7 February and 29 March 2012, separate liquidation proceedings were opened against thirteen members of the group of companies, and the first instance court appointed the same liquidator for them.

In the course of the separate liquidation proceedings, the banks that had jointly provided a loan for the group of companies appointed a representative from among themselves to act on behalf of them in order to recover their claims. On the basis of section 49/D of Act no. XLIX of 1991 on Bankruptcy Proceedings and Liquidation Proceedings (hereinafter referred to as the Bankruptcy Act), the representative submitted a written objection against the liquidator's measures in each liquidation proceedings and requested the court to oblige the liquidator to pay the sums held in the debtors' bank accounts to the pledge holders. The represented banks acted as parties intervening on the representative's side in the proceedings.

Although the fact that an objection had been raised in each liquidation proceedings, the first instance court dealt with these objections in one set of proceedings, as a result of which it obliged the liquidator to conduct proceedings as regulated in section 49/D of the Bankruptcy Act in respect of the debtors' pledged bank accounts.

Proceeding upon an appeal lodged by the liquidator on behalf of the debtors, the second instance court modified the first instance court's decision and rejected the objections. The second instance court argued that the act of claiming an amount held in a bank account from a bank (withdrawal of money) and the act of instructing a bank to make a payment from a bank account to a third party (payment order) do not qualify as recovery of claims, therefore the creditor should not be entitled to require the liquidator to pay the sums held in the debitors' bank accounts to him on the basis of section 49/D, subsection (1) of the Bankruptcy Act.

Proceeding upon a petition for a review procedure submitted by the representative of the banks, the Curia quashed the second instance decision and upheld the first instance decision by ordering the liquidator to settle accounts with the creditor and the intervening parties – in respect of each liquidation proceedings – within 30 days in such a way as to determine the value of the pledged assets regarding each debtor as of the starting date of their respective liquidation proceedings.

In the view of the Curia, section 49/D of the Bankruptcy Act not only contains the rules of settlement of accounts, but it also defines the first category of the liquidation priority list in case of pledged assets. The Curia has already pointed out in a number of decisions (no. Gfv.X.30.039/2012/8 and Gfv.X.30.409/2010/5) that the legislator had modified the liquidation priority of claims by adopting an amendment to the Bankruptcy Act that had entered into force on 1 January 2007 so as to give priority to pledge holders for the recovery of their claims from the pledge debtor's assets up to a maximum of the value of the pledged assets over creditors having claims to be satisfied according to the liquidation priority list regulated in section 57, subsection (1) of the Bankruptcy Act.

Section 49/D, subsection (1) of the Bankruptcy Act lays down the same rules, irrespective of the type of pledge that has been established, as regards making payments from the sums collected by the liquidator to pledge holders [except for pledges on financial assets that are covered by section 49/D, subsection (2) of the Bankruptcy Act], hence these rules shall also be applicable to pledges on claims.

Sums held in a bank account are to be claimed on the account holding bank. The term "recovery of claims" cannot be interpreted in a restrictive manner. The act of making a "voluntary" payment from a bank account by the account holding bank – with regard to the specific features of credit balances on bank accounts – shall be qualified as "recovery" for the interpretation of section 49/D, subsection (1) of the Bankruptcy Act.

Budapest, the 29th of May 2015

Civil Department of the Curia of Hungary