Title:
IV.6.12 - Plurality of creditors

Content:
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Two or more persons who may claim one and the same performance from the debtor are (a) joint, or (b) partial creditors.

(a) Joint creditors

(aa) A joint creditor may claim full performance from the debtor and the debtor may render full performance to any of those joint creditors.

(bb) If one joint creditor has received performance, in kind or by way of set-off, the liability of the debtor to the other joint creditors is discharged to the extent of such performance or set-off. The same applies if one joint creditor concludes a settlement with the debtor.

(cc) As between themselves, joint creditors are entitled to performance in equal shares. If a joint creditor has received more than that creditor’s share, that creditor must transfer the excess to the other creditors to the extent of their respective shares.

(dd) A release granted to the debtor by one of the joint creditors has no effect on the other joint creditors.

(ee) A debtor may invoke against a joint creditor any defense which he can invoke against another joint creditor, other than a defense personal to that other creditor. Invoking the defense has no effect with regard to the other joint creditors.

(b) Partial creditors

(aa) A partial creditor may claim from the debtor only his share of the claim and the debtor owes to that partial creditor only that creditor’s share of the claim.

(bb) Partial creditors are entitled to performance in equal shares unless the contract or the law provides otherwise.

Commentary:
1 This Principle is the mirror image of Principle IV.6.11 as it deals with two types of plurality of creditors, joint creditors and partial creditors. Consequently, the two Subsections are mirror images of the two Subsections of Principle IV.6.11.

2 Subsection (a) stipulates that in case of joint creditors, which are frequently encountered in practice, every creditor may claim whole performance from the debtor without having to involve all the joint creditors. The debtor may invoke against the creditor any defense which he can invoke against another joint creditor, unless such defense is linked to the person of that other creditor and may therefore not be invoked by the debtor vis-à-vis another joint creditor. Performance by the debtor, either in kind or by way of set-off, discharges the debtor also vis-à-vis the other joint creditors to the extent of such performance or set-off. As to the internal right to performance, Subsection (a) (cc) provides a default rule of equal sharing. If one joint creditor has received more than his internal share, he must transfer the excess to the other joint creditors, but only to the extent of their respective shares.

3 Subsection (b) stipulates that in case of partial creditors, one creditor may claim from the debtor only his share of the claim. This means that the debtor carries separate liabilities vis-à-vis every partial creditor. Non-performance by the debtor vis-à-vis one partial creditor does not affect his obligations vis-à-vis the other partial creditors. Absent a contrary indication in the contract or in the law, partial creditors are entitled to performance vis-à-vis the debtor in equal shares.