Content:

No. V.2.6 - Imputation of payments

(a) If a debtor owes more than one monetary obligation to the same creditor, he is entitled to specify at the time of payment the obligation to which it wants his payment to be applied.

(b) Absent such a specification by the debtor, the creditor is entitled to inform the debtor, within a reasonable time after payment, of the obligation to which it attributes the debtor's payment, provided that the obligation is due and indisputed.

(c) In any event, payment by the debtor of his obligation vis-a-vis the creditor discharges first his obligation to pay expenses, then interest due and finally the principal sum.

(d) Absent attribution under para 1, payment is to be attributed to:

(i) an obligation which is due or which is the first to fall due;
(ii) the obligation for which the obligee has least security;
(iii) the obligation which is the most burdensome for the obligor;
(iv) the obligation which has arisen first.

(e) This Principle applies with appropriate adaptations to the imputation of performance of non-monetary obligations.

Commentary:

1 The Principle concerns a situation in which a debtor owes several monetary obligations at the same time to the same creditor and makes a payment the amount of which is not sufficient to discharge all those debts.

2 In such a situation, the Principle of party autonomy allows the debtor to specify at the time he makes the payment the debt to which he intends his payment to be applied. For the debt so indicated, the debtor's payment discharges first any expenses, then interest and then the principal sum.

3 In the absence of such imputation by the paying debtor, the creditor is entitled to impute the payment received, but not to a disputed debt.

4 If neither party has made an indication as to the imputation of the debtor's payment, para. 4 provides an order of criteria for the imputation of the payment.