

## **Reconstruction of the System of Plurality of Creditors**

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### **Abstract**

In addition to divisible claims, solidary claims, and indivisible claims, which Taiwan Civil Code expressly provides for the plurality of creditors, legal theory and courts recognize co-owned claims, joint co-owned claims, and coordinate claims. Roman law did not recognize agency and assignment of claims, so solidary claims functioned instead. Nowadays, solidary claims are rarely used in practice and are superfluous. Where performance is divisible, and neither the contract nor the law provides for the application of different types of plurality, the divisible claims rule should apply. Even so, the exercise of the claim based on a contract is still to be bound by that particular contract, and the presumption of the rule of divisible claims may not be in the interests of the parties. When the performance is indivisible, there are several possibilities for the exercise of the claim: first, each creditor has the right to claim for himself the whole performance; second, each may request the debtor to perform to all creditors, and the right to receive belongs to all creditors; third, the exercise of claims must be done jointly by all. The rule for indivisible claims under Taiwan Civil Code adopts the second model. This essay holds that Article 293 of Taiwan Civil Code is applicable for the co-owned claims, the joint co-owned claims, and coordinate claims, which are legally indivisible regardless of whether they are divisible in the nature of the performance. The internal relationship between creditors and the attribution of claims shall be determined by the law or contract arising from the plurality. Where there is an agreement between the debtor and the creditors that the exercise of claims must be done jointly, the most important example being the common banking account, Article 293 of Taiwan Civil Code applies but for that regard.

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