

Announcement of the Supreme People's Court of the People's Republic of China

The Provisions of the Supreme People's Court on Several Issues concerning the Application of Statute of Limitations during the Trial of Civil Cases, which were adopted at the 1450th meeting of the Judicial Committee of the Supreme People's Court on August 11, 2008, are hereby promulgated, and shall come into force as of September 1, 2008.

August 21, 2008

Provisions of the Supreme People's Court on Several Issues concerning the Application of Statute of limitations during the Trial of Civil Cases

(adopted at the 1450th meeting of the Judicial Committee of the Supreme People's Court on August 11, 2008, Judicial Interpretation No. 11 [2008])

With a view to correctly applying the legal provisions on statute of limitations and protecting the legitimate rights and interests of the parties, these Provisions are formulated in accordance with the General Principles of Civil Law of the People's Republic of China, Real Right Law of the People's Republic of China, Contract Law of the People's Republic of China, Civil Procedure Law of the People's Republic of China and other laws and by taking into account the judicial practices.

Article 1 A party may make an argument on statute of limitations against a claim for creditor's right, but the people's court shall not support an argument of a party on statute of limitations against any of the following claims for creditor's right:

1. A claim for payment of the principal and interest of a deposit;
2. A claim for payment of the principal and interest of government bonds, financial bonds or enterprise bonds issued to non-specific objects;

3. A claim for payment of the capital contribution arising out of any investment relationship;
or

4. Any other claim to which the provisions on statute of limitations are inapplicable.

Article 2 The people' s court shall not support any agreement reached in violation of law between the parties on extending or shortening the statute of limitations or waiving any interest from the statute of limitations.

Article 3 If a party fails to make an argument on statute of limitations, the people' s court shall not expound the issue of statute of limitations and take the initiative to apply the statute of limitations in making a judgment.

Article 4 If a party fails to make an argument on statute of limitations during the trial of the first instance, but makes one during the trial of the second instance, the people' s court shall not support it unless any new evidence proves that the statute of limitations for the claim of the opposite party has expired.

If a party fails to make an argument on statute of limitations under the provision of the preceding paragraph, the peoples' court shall not support a petition of the party for retrial or an argument of the party for retrial on the ground that the statute of limitations has expired.

Article 5 If the parties has agreed on the performance of a same debt in installments, the statute of limitations shall be computed from the date of expiration of the performance period of the final installment.

Article 6 For a contract without an agreed performance period, if the performance period may be determined in accordance with Articles 61 and 62 of the Contract Law, the statute of limitations shall be computed from the date of expiration of the performance period; otherwise, the statute of limitations shall be computed from the date of expiration of the grace period during which the creditor requires the debtor to perform the obligation, but if the debtor clearly states that it will not perform the obligation when the creditor claims the right against the debtor for the first time, the statute of limitations shall be computed from the date when the debtor

clearly states that it will not perform the obligation.

Article 7 If a party having the right to revoke a contract requests revocation of the contract, the provision of Article 55 of the Contract Law on the one-year period of right shall apply.

The people's court shall not support an argument made by the opposite party on statute of limitations for the right to revoke the contract.

The statute of limitations for a claim for restitution of property or compensation for losses due to the revocation of a contract shall be computed from the date of revocation of the contract.

Article 8 The statute of limitations for a claim for restitution of unjust enrichment shall be computed from the date when a party knows or should have known the fact of unjust enrichment and the opposite party.

Article 9 The statute of limitations for a claim for payment of necessary management expenses or compensation for losses incurred due to voluntary services of a keeper shall be computed from the date when the voluntary services are finished and the keeper knows or should have known the principal.

The statute of limitations for a principal's claim for compensation for losses incurred due to improper voluntary services shall be computed from the date when he knows or should have known the keeper and the facts of damage.

Article 10 Any of the following circumstances shall be determined as falling within the meaning of the provision of Article 140 of the General Principles of Civil Law that "one party makes a claim" and having the effect of interruption of statute of limitations:

1. A party directly serves a document of claim on the opposite party, the opposite party affixes his signature or seal on the document, or it may be otherwise proved that the document reaches the opposite party which fails to affix his signature or seal on the document;

2. A party makes a claim by correspondence or data message, and the letter or data message reaches or should have reached the opposite party;

3. A party, which is a financial institution, deducts and collects the owed principal and interest out of the account of the opposite party; or

4. The whereabouts of a party is unknown, and the opposite party publishes an announcement of claim on a national medium or a provincial influential medium of the place of domicile of the party whose whereabouts is unknown, except as otherwise provided by a law or judicial interpretation.

Under the circumstance as mentioned in Item (1) in the preceding paragraph, if the opposite party is a legal person or any other organization, the signatory may be its legal representative, the major person in charge, the department responsible for receiving and distributing letters or an authorized subject; if the opposite party is a natural person, the signatory may be the natural person himself, a relative with full civil capacity living together with him or an authorized subject.

Article 11 Where a right holder makes a claim for part of a same creditor' s right, the effect of interruption of statute of limitations reaches the rest of the creditor' s right unless the right holder expressly indicates his waiver of the rest of the creditor' s right.

Article 12 Where a party files a bill of complaint to or orally brings a lawsuit in the people' s court, the interruption of statute of limitations shall start from the date of filing a bill of complaint or orally bringing a lawsuit.

Article 13 The people' s court shall determine any of the following circumstances as having the same effect of interruption of statute of limitations as bringing a lawsuit has:

1. Applying for arbitration;

2. Applying for a payment order;
3. Applying for bankruptcy or making a claim in bankruptcy;
4. Applying for declaring the missing or death of an obligor for the purpose of making a claim;
5. Applying for a measure before instituting a lawsuit, such as property preservation before instituting a lawsuit or temporary injunction before instituting a lawsuit;
6. Applying for enforcement;
7. Applying for adding a party or being notified to participate in the lawsuit;
8. Making a claim for offset during litigation; or
9. Any other matter which has the same effect of interruption of statute of limitations as bringing a lawsuit has.

Article 14 Where a right holder requests the people's mediation commission or a state organ, a public institution, a social group or any other social organization which has the power to solve relevant civil disputes according to law to protect a corresponding civil right, the interruption of statute of limitations shall start from the date when the request is made.

Article 15 Where a right holder reports a case to or file a charge with the public security organ, the people's procuratorate or the people's court to request protection of his civil rights, the interruption of statute of limitations shall start from the date of report or filing a charge.

If the aforesaid organ decides to reject or revoke the case or decides not to institute a prosecution, the statute of limitations shall be recomputed from the date when the right holder knows or should have known the rejection or revocation of the case or the non-prosecution. For a criminal case which has entered into the trial stage, the statute of limitations shall be recomputed from the date when the criminal adjudicative document enters into effect.

Article 16 Where an obligor makes a commitment to or commits an act of performance in installments, partial performance, provision of a guaranty, request for deferred performance or making of a debt repayment plan, it shall be determined as falling within the meaning of the provision of Article 140 of the General Principles of Civil Law that a party “agrees to perform the obligation” .

Article 17 A cause having the effect of interruption of statute of limitations on one of the joint and several creditors shall be determined as having the same effect of interruption of statute of limitations on other creditors.

The cause having the effect of interruption of statute of limitations on one of the joint and several debtors shall be determined as having the same effect of interruption of statute of limitations on other joint and several debtors.

Article 18 Where a creditor brings a subrogation action, it shall be determined as having the effect of interruption of statute of limitations on the creditor’ s rights of both the creditor and the debtor.

Article 19 For the assignment of a creditor’ s right, it shall be determined that the interruption of statute of limitations shall start from the date when the notice of assignment of the creditor’ s right reaches the debtor.

For the debt assumption which constitutes the original debtor’ s acknowledgement of the debt, it shall be determined that the interruption of statute of limitations shall start from the date when the expression to assume the debt reaches the creditor.

Article 20 Any of the following circumstances shall be determined as falling within the meaning of “other obstacle” as provided for in Article 139 of the General Principles of Civil Law, and

the statute of limitations shall be suspended:

1. A person without civil capacity or with limited civil capacity, whose right has been infringed upon, has no legal representative, or his legal representative is deceased or has lost the right of representation or the civil capacity;
2. The inheritor(s) or estate administrator has not been decided after the beginning of inheritance;
3. The right holder is unable to make a claim because of being controlled by the obligor or any other person; or
4. Any other objective circumstances under which the right holder is unable to make a claim.

Article 21 Upon the expiration of statute of limitations for the primary debt, the guarantor shall have the right to make an argument on statute of limitations as the primary debtor has.

If the guarantor fails to claim the aforesaid right to make an argument on statute of limitations, and exercises the right of recourse against the primary debtor after assuming the liability for guarantee, it shall not be supported by the people's court unless the primary debtor agrees to make reimbursement.

Article 22 Upon the expiration of statute of limitations, if a party makes an argument on the ground of expiration of statute of limitations after having expressed to the opposite party his consent to perform the obligation or after having voluntarily performed the obligation, it shall not be supported by the people's court.

Article 23 After coming into force, these Provisions shall apply to a case which is still at the stage of trial of the first instance or second instance; and shall not apply to the retrial by the people's court of a case whose final trial has ended before these Provisions come into force.

Article 24 Where any relevant judicial interpretation made by this Court before these Provisions come into force contravenes these Provisions, these Provisions shall prevail.