

Regulations of the Supreme People's Court on Relevant Issues concerning
System of Applicable Prescription of Action in Hearing Civil Case

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Court on August 11, 2008)

Judicial Interpretation No. 11 [2008]

With a view to correctly applying the legal regulations on prescription of action and protecting the legal rights and interests of the parties, these Regulations 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 file a counterargument on prescription of action against a claim for creditor's right, but the people's court shall not support a counterargument of a party on prescription of action 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 claims to which the regulations on prescription of action are inapplicable.

Article 2 The people's court shall not legitimize any agreement reached in violation of law between the parties on extending or shortening the prescription of action or waiving in advance any interest from the prescription of action.

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

Article 4 If a party fails to make a counterargument on prescription of action 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 prescription of action for the claim of the opposite party has expired.

If a party fails to make a counterargument on prescription of action under the provision of the preceding paragraph, the peoples' court shall not support a petition of

the party for retrial or a counterargument of the party for retrial on the ground that the prescription of action has expired.

Article 5 If the parties has agreed on the performance of a same debt in installments, the prescription of action shall be computed as 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 prescription of action shall be computed as from the date of expiration of the performance period; otherwise, the prescription of action shall be computed as 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 prescription of action shall be computed as from the date on which such statement is clearly made by the debtor.

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

The people's court shall not support a counterargument made by the opposite party on prescription of action against the claim to revoke the contract.

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

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

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

The prescription of action for a principal's claim for compensation for losses incurred due to improper voluntary services shall be computed as 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 deemed to have the effect of interruption of prescription of action, in light of the provision of Article 140 of the General Principles of Civil Law that "one party makes a claim":

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 mail or electronic message, and the mail or message reaches or should have reached the opposite party;

3. A party as a financial institution deducts and collects the owed principal and interest out of the account of the opposite party in accordance with law or the agreement of parties;

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, but 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, person chiefly in charge, or department or authorized entity in charge of mail dispatching and collecting; if the opposite party is a natural person, the signatory can be the natural person himself, his co-resident kinsperson or other authorized entity with complete capacity .

Article 11 If the obligee lodges a partial claim for the same creditor's right, the effect of interruption of prescription of action shall apply to the rest of the right unless the obligee expressly states waving of the rest of the right.

Article 12 If a party files a statement of complaint to a people's court or lodges a complaint orally, the prescription of action shall be discontinued as from the date on which the written or oral complaint is lodged.

Article 13 The people's court shall deem any of the following items carries the same effect of interruption of prescription of action as incurred by instituting an action:

1. Petition for arbitration;
2. Petition for an order of payment;
3. Petition for bankruptcy, and declare the credit of bankruptcy;
4. Petition for declaration of disappearance or death of the obligor in order to claim the right;

5. Petition for attachment of properties, temporary injunction and other court measures before the institution of an action;
6. Petition for compulsory enforcement;
7. Petition for addition of parties or be notified to take part in an action;
8. Avail itself of set-off in a litigation;
9. Other items that carry the same effect of interruption of prescription of action as incurred by an action.

Article 14 If an obligee files a petition for protection of corresponding civil rights to a people's mediation commission or other state agencies, public institutions or mass organizations that are legally authorized to handle relevant civil disputes, the prescription of action shall be discontinued as from the date on which such a petition is filed.

Article 15 If an obligee reports a case or raise an accusation to the public security organ, people's procuratorate and people's court to seek protection of its civil rights, the prescription of action shall be discontinued as from the date on which he reports the case or files the accusation.

If the above-mentioned organs decide not to file the case, or quash the case and initiate no prosecution, the prescription of action shall be recomputed as from the date on which the obligee knows or should have known the above decision is made; for a criminal case that has entered the inquisition stage, the prescription of action shall be recomputed as from the date on which the document of criminal judgment comes into force and effect.

Article 16 If an obligor commits himself to performance in installments, partial performance, providing a guarantee, petitioning for a prolonged performance, or formulating a plan to clear off his debt, he shall be deemed to "agree to fulfill obligations" within the meaning of provision of Article 140 of the General Principle of Civil Law.

Article 17 The cause that leads to the interruption of prescription of action with one of joint and several creditors shall be deemed to apply to the rest of the creditors.

The cause that leads to the interruption of prescription of action with one of joint and several debtors shall be deemed to apply to the rest of the debtors.

Article 18 If a creditor brings a suit of subrogation, the suit shall be deemed to have the effect of interruption of prescription of action on both claims of the creditor and claims of the debtor.

Article 19 For assignment of creditor's claim, the prescription of action shall be deemed to be interrupted as from the date on which the notification of assignment reaches the debtor.

In the event that the original debtor is required to acknowledge his liability to assume the debt, the prescription of action shall be deemed to be interrupted as from the date on which the declaration of will to assume the debt reaches the creditor.

Article 20 The prescription of action shall be deemed to be discontinued under any of the following circumstances within the meaning of “other obstacles” provided in Article 139 of the General Principles of Civil Law:

1. A person with no or qualified capacity for civil conduct whose right has been infringed has no legal representative, or his legal representative has died, lost his right of representation or capacity for conduct;

2. The successor or the manager of the deceased property remains undetermined after the beginning of inheritance.

3. An obligee is unable to claim his right for being under the control of his obligor or others.

4. Other objective circumstances which cause an obligee to be unable to claim his right.

Article 21 If the prescription of action of principal debt expires, the guarantor has the principal obligor's right to file a counterargument on prescription of action.

If the guarantor fails to file a counterargument on the foregoing prescription of action and exercises his right of recourse after undertaking the guaranty liability, the people's court shall not support his claim unless the principal obligor undertakes to effect payment.

Article 22 If a party makes, after the expiration of the prescription of action, a declaration of will to perform the obligation to the opposite party or perform the obligation voluntarily but makes a counterargument on the ground that the prescription of action expires, the people's court shall not support it.

Article 23 After the Regulations comes into force, cases that remain at the stages of first instance or second instance shall be governed by the Regulations; if cases that have been finally judged are reheard by a people's court, the Regulations shall not apply.

Article 24 The Regulations shall prevail in the event that there is contradiction between the Regulations and previous judicial interpretations made by the Court.