Court Clarifies Statute of Limitations for Civil Cases

The Provisions of the Supreme People’s Court on Several Issues Concerning Application of The Statute of Limitations System in Trial of Civil Cases brings forth 24 articles which give systemic and comprehensive regulations in regards to the general principles, calculation, interruption, suspension, effect and supplementary provisions of the statute of limitations. For full translation see page xx

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In China, the statute of limitations is two years for most debt claims and one year for claims of personal injuries, product quality disputes, rental disputes, etc. There are seven articles with respect to the statute of limitations in the General Principles of the Civil Law of the People’s Republic of China; however, these articles and the relevant judicial interpretations promulgated since do not provide comprehensive guidelines for interpreting the statute of limitations system. In particular, this is apparent when discussing the issue of whether the credit of financial institutions may obtain the court’s protection when the statute of limitations expires and continues to initiate fierce debate. The Provisions of the Supreme People’s Court on Several Issues Concerning Application of The Statute of Limitations System in Trial of Civil Cases (The Statute of Limitations System) took effect on September 1, 2008.

APPLICATION SCOPE AND EXEMPTION SYSTEM OF LIMITATIONS RULES

Article 1 of the Statute of Limitations System stipulates that the party concerned may appeal the statute of limitations in regards to the right to make an obligatory claim. However, it makes no provisions as to the question of whether the statute of limitations may be applicable to the claim of property ownership. It is generally believed by Chinese legal professionals that only the party with the right to make an obligatory claim may enjoy the right to plea against the statute of limitations.

The Statute of Limitations System also makes provisions in regards to whether the parties may agree on the statute of limitations, whether the court should invoke the provisions of the statute of limitations in trial or describe the statute of limitations in the case. Article 2 of the Statute of Limitations System stipulates that if the parties concerned, in breach of laws, reach an agreement on extending or shortening the statute of limitations or abandoning the interests of statute of limitations in advance, the court shall not affirm such agreement. In addition, the party concerned must make a plea against the statute of limitations during the first instance; otherwise, the court will not accept any further plea during the second instance (with the exception of when new evidence emerges). Finally, provided that the party concerned does not refer to the statute of limitations, the court shall not describe or apply the Statute of Limitations System during a case.

Note that the rights to claim for the payment of principal and interest of a deposit, the cashing of national debts, and the principal and interest of financial bonds are exempt from the Statute of Limitations System.

BEGINNING DATE AND INTERRUPTION OF THE STATUTE OF LIMITATIONS

A provision of the law states: “A statute of limitations shall be calculated as of the date when the entitled person knows or should know that his/her rights have been infringed upon.” According to this provision, if a party’s civil rights are infringed upon, the term during which the laws shall protect his or her rights shall be calculated from the date when he or she actually knows his or her rights have been infringed upon or when the party should have known of the infringement.

Article 137 of the General Principles of the Civil Law of the People’s Republic of China provides a provision for the date from which the statute of limitations should begin, but does not clearly specify how to establish a beginning date for the right to claim for the payment of each instalment when the parties concerned agree to perform the payment of a debt through instalments. The legal profession has gradually come to an understanding that in the event that the parties concerned agree to payment of a debt through instalments, the statute of limitations for each instalment should be calculated from the expiration date of the last instalment paid. As per Article 5 of the Statute of Limitations System, in the event that the parties concerned agree to perform a debt through instalments, the statute of limitations shall be counted from the expiration date of the last instalment. As for the contract in which its limitations of performance have

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not been agreed or can not be ascertained, the statute of limitations shall be counted from the expiration date of the grace period after the creditor requests that the debtor perform his duties. However, in a case where the debtor clearly expresses that it will not perform its duty the first time the creditor claims his rights to the debtor, the limitations shall be counted from the date of the expression of non-performance of the debt. The authors of this article take the view that the parties should claim their rights according to the first expression of non-performance in order to avoid repetitive litigation, lessen legal fees and improve litigant efficiency. In addition, in accordance with the Statute of Limitations System, if the creditor claims his right to a portion of a debt, the interruption of the statute of limitations shall apply to the remaining debt.

Article 10 of the Statute of Limitations System provides four circumstances in which private remedies could interrupt the statute of limitations: (i) where one party delivers documents to the opposite party to claim his rights, and the opposite party affixes his signature or seal on the documents, or in the absence of signature or seal, it can be proven that such documents have been served (if the party being served is a legal person or organisation, the person who signs the documents should be the legal representative, a person in charge, the department in charge of receiving or sending mail, or someone with authorisation; if the party is a natural person, the person who signs the documents should have complete capacity for civil conduct, or other authorised persons including the signee’s relatives living in the same domicile); (ii) where a party concerned claims his rights by sending mail or electronic data, and the mail or electronic data arrive at or should have arrived at the opposite party; (iii) where one party concerned is a financial institution, and it deducts the principal and interest from the opposite party’s account according to the law or according to an agreement made by both parties; or (iv) where one party is unable to be found, and the opposite party publishes a statement claiming his rights in a major source of media at the national or provincial level and in the place where that party was last known to be located.

As per Article 13 of the Statute of Limitations System, the Statute of Limitations may also be interrupted if the obligee takes the public remedies listed here: (i) the bringing of a lawsuit or arbitration; (ii) applying for pre-litigation measures such as pre-litigation property preservation, pre-litigation temporary injunctions, etc.; (iii) applying for a payment order or compulsory enforcement; (iv) applying for bankruptcy or a declaration of bankruptcy credit; or (v) applying for protection of the relevant civil rights with the People’s Mediation Committee or another governmental authority, institution, and/or social group which is entitled to solve such disputes. The statute of limitations shall be interrupted upon the date of raising such a request or application. Note that, in case the obligee reports or raises a complaint to the Public Security Organisation, the People’s Procuratorate, or the People’s Court for the protection his civil rights, the statute of limitations shall be interrupted upon the date of such a report.

Pursuant to Article 16 of the Statute of Limitations System, if the obligor makes a commitment to or performs the debt through the payment of an instalment and therefore partially performs the debt, provides a guarantee, requests an extension of performance or makes a plan to pay off the debt, the statute of limitations shall be interrupted.

The statute of limitations contains provisions for joint credit: if one joint creditor has cause for interruption, such interruption also applies to all other joint creditors. Upon the date of the interruption, the statute of limitations shall be re-calculated. The statute of limitations also contains provisions for assignment of credit and debt: if the credit is assigned, it shall be deemed that the statute of limitations has been interrupted upon the date of the obligor’s receipt of the assignment notification. In the case of assigning debts, if the previous debtor admits such debt, it shall be deemed that the statute of limitations is interrupted upon the arrival of the expression of affording such debt.

The Statute of Limitations System also applies to financial institutions. The Reply of the Supreme People’s Court regarding the Issue that the Statute of Limitations as Stipulated by the General Principles of the Civil Law shall Apply to the Unpaid Debt of more than 2 Years by Enterprises or Individuals to a National Bank was issued on February 22 1993 and provides that if a professional bank or other financial institution of the state requests the People’s Court to protect its right to recover a debt, the provisions concerning the statute of limitations as regulated by the General Principles of the Civil Law shall apply.

If the statute of limitations has expired without suspension, interruption or extension, the People’s Court shall reject the bank’s litigation request. Paragraph 3 of Article 10 of the Statute of Limitations System newly promulgated reaffirms this stipulation.

The Statute of Limitations System still has some defects. For example, the statute of limitations has not provided any further clarification or provisions regarding the right to claim for those disputes involving invalid or unperformed contracts. Nevertheless these clarifications are a welcome step and will go a long way towards helping codify the process associated with disputes in China.