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Amendments to Statute of Limitation in the New Civil Law

I. General Introduction

The Fifth Session of the 12th National People's Congress adopted the "General Provisions of Civil Law of the People's Republic of China" (hereinafter "new Civil Law") on March 15, 2017. The law is considered a milestone in the history of Chinese civil law legislation. The introduction of new Civil Law is the first step to compile a comprehensive Chinese Civil Code.

The new Civil Law shall come into effect on October 1, 2017. But the old "General Provisions of Civil Law of the People's Republic of China", which came into effect in 1987 (hereinafter "1987 Civil Law"), will not be annulled. Shi Hong, the vice director of the office for Civil Law in the Legislative Affairs Commission of the Standing Committee of the National People's Congress, claimed in an interview that the 1987 Civil Law will not be repealed by the new legislation. Instead, it will be abolished only after the systematical completion of the whole civil code. For the time being, in the event of conflicts between the new Civil Law and the 1987 Civil Law, the new Civil Law shall prevail.

There are several significant changes in the new Civil Law, including the introduction of the green principle, civil rights for fetuses, minimum age for persons with limited capacity for civil conduct, special legal persons, virtue property, changes to the statute of limitation and so on. This CLR will mainly focus on the new and modified rules pertaining to the statute of limitation.

In part II, we will briefly detail the provisions, which will be newly added to the PRC's law relating to the statute of limitation with the introduction of the new Civil Law. In the subsequent part III, we will then discuss the provisions of the 1987 Civil Law that are going to be changed by the new Civil Law. Part IV will then contain a number of conclusive remarks.

II. Newly Added Provisions Regarding Statute of Limitation

The provisions regarding the statute of limitation are set out from article 188 to article 199 in the new Civil Law. Among these, article 190, 191, 196, 198 and 199 will be newly introduced on October 1st with the provisions of the new Civil Law.

In detail, the articles state the following:

Article 190 states that the limitation period of a claim of a person without or with limited capacity for civil conduct against his or her statutory agent shall be calculated from the day when the statutory agency is terminated.

Article 191 provides that the limitation period of a claim for damages of a minor who has suffered sexual assault shall be calculated from the day when the victim attains the age of eighteen.

Article 196 sets out that the provisions on limitation period shall not apply to the following claims:

(1) A claim for cessation of infringement, removal of obstacles, or elimination of danger.

(2) The claim of a holder of a real right in an immovable or a registered real right in a movable for restitution of property.

(3) A claim for payment of child support, support for elderly parents, or spousal support.

(4) Any other claim to which the limitation period does not apply in accordance with the law.

In the context of article 196 it is to be noted that article 1 of the *Provisions Regarding the Application of Limitation of Action in Civil Cases* also exempts three kinds of claims from limitations. Those claims are namely:

(1) Obligatory claims to pay the principal and interest of a deposit;

(2) Obligatory claims to pay the principal and interest of government bonds, financial bonds and corporate bonds issued to unspecified objects;

(3) Obligatory claims to pay and contribute as a result of an investment relationship.

Article 198 states that where any law prescribes arbitration, such a law shall apply; otherwise, the statute of limitation shall apply.

Article 199 purports that, except as otherwise provided for by any law, the duration of rights such as the right of revocation and the right of rescission as granted by laws or agreed upon by the parties shall be calculated from the

day when a right holder knows or should have known that such a right has arisen, and the provisions on the suspension, interruption, and extension of the statute of limitation shall not apply to the above duration. The right of revocation, right of rescission, and other rights shall be extinguished upon expiration of such duration.

Here it is important to note that the new article 199 does not change the 1987 Civil Law. Rather, it collects the limitation periods of a number of rights, which were previously dispersed among various laws, such as Contract Law or Succession Law.

III. Changes Based on the Existing Provisions

a. Calculation of the Period after the Suspension of Limitation

Article 194 of the new Civil Law represents a modification of article 139 of the 1987 Civil Law and the specifications to the latter article set out in article 20 of the 2008 *Provisions Regarding the Application of Limitation of Action in Civil Cases* issued by the Supreme Court.

Article 194 namely states that the limitation period shall be suspended if during the last six months of the period, a claim cannot be filed for any of the following obstacles:

(1) A force majeure.

(2) The person without or with limited capacity for civil conduct has no statutory agent, or his or her statutory agent dies, loses capacity for civil conduct, or loses the power conferred by laws.

(3) The successor or legacy administrator has not been determined after the commencement of succession.

(4) The obligee is controlled by the obligor or any other person.

(5) Any other obstacle resulting in the obligee's failure to file a claim. The limitation period shall expire six months after the day when the obstacle causing the suspension is eliminated.

Compared with the existing provisions provided in article 139 of the 1987 Civil Law and article 20 of the *Provisions Regarding the Application of*

Limitation of Action in Civil Cases, the reasons for suspension of limitation do not change in substance. However, the calculation method for the period after the suspension of limitation will be modified with the introduction of article 194 of the new Civil Law.

Article 139 of the 1987 Civil Law also states that the limitation period will be suspended if the obligee cannot exercise her or his rights during the last six months of the limitation period because of one of the obstacles discussed above. It further states that calculation of the limitation period shall resume on the day when the grounds for the suspension are eliminated. Article 194 of the new Civil Law contains a slightly different rule, stating that the limitation period shall expire six months after the day on which the grounds for suspension were eliminated.

In other words, in the 1987 Civil Law, the limitation period after the elimination of the grounds for suspension depended on the amount of time that was left of the original limitation period, i.e. on the precise date within the last six month of the limitation period, on which the grounds for suspension arose. In the new Civil Law however, the limitation period shall be a fixed six month after the grounds for the suspension of the limitation were eliminated, notwithstanding at what point of time within the last six month of the original limitation period the obstacle arises.

b. Extension of limitation period

Article 188 of the new Civil Law represents a modification of article 135-137 of the 1987 Civil Law. It is the most substantial change regarding the statute of limitation introduced by the new Civil Law.

Article 188 states that an action instituted in a people's court for protection of civil rights is limited by three years, except as otherwise provided by any law.

The limitation period shall be calculated from the day when the obligee knows or should have known that his or her right has been infringed upon and who the obligor is, except as otherwise provided for by any law. The people's court shall not offer protection if 20 years have elapsed since the infringement; Under special circumstances, The people's court may decide to extend the limitation period upon application of the obligee.

There are three considerable amendments as compared to the articles 135-137 of the 1987 Civil Law.

Firstly, the starting date of the limitation period has changed. According to article 137 of the 1987 Civil Law, the limitation period is calculated from the date on which the obligee knows or should know of the damage to the rights. The new article 188 adds one more requirement, which is that the obligee knows or should know the obligor. In other words, an additional requirement for the starting date of the limitation period was introduced, i.e. that the obligee knows or should know the obligor. This is in addition to the first requirement – which was also taken over from article 137 of the 1987 Civil Law -, requiring that the obligee knows (or should know) the damage to her or his right. Such a provision is more conducive to protecting the rights of the obligee.

Another notable amendment is the omission of article 136 of the 1987 civil law, which reduced the limitation period from two to one year in four particular circumstances: (1) claims for compensation for bodily injuries; (2) sales of substandard goods without proper notice to that effect; (3) delays in paying rent or refusal to pay rent; or (4) loss of or damage to property left in the care of another person.

However, there is no corresponding provision in the new Civil Law. There are two diametrically opposed interpretations of this change. One view is that the new Civil Law implicitly abolishes the reduction of the limitation period to one-year in the enumerated cases above. This view holds that - unless stipulated by other provisions such as article 129 of PRC Contract Law - the limitation is 3 years. The others suppose that the one-year limitation of the old article 136 can also be considered as an exception provided by law and therefore continues to be effective. The latter view would go against the legislator's general idea of extending the limitation to better protect right holders. Thus, in the opinion of Wenfei Law, it is more reasonable to assume that article 136 of the 1987 Civil Law is to be abolished, as long as no opposite interpretation is issued by official judicial interpretation.

Last but not the least, the standard limitation period will be extended from 2 to 3 years. One particular problem arises regarding the legal application of this new rule. Namely whether the new provision will be retroactive or not. If yes, how will the retroactivity work in practice? If no, what practical consequences will ensue? No official judicial interpretation of the new Civil Law has been issued yet. Since these interpretations play a decisive role in

the application of the law, it is difficult to make any final conclusions. However, we will briefly discuss three different possible scenarios.

- (1) Article 188 of the new Civil law is not retroactive. Any infringement to his or her civil rights, which is known or should be known by the obligee before 1 October 2017 is treated under the rules of the 1987 Civil Law.
- (2) Article 188 of the new Civil Law is partly retroactive. One could refer to the *Judicial Interpretation to Administrative Procedure Law of the People's Republic of China* for reference. There, the Supreme Court partly adopted the no retrospective effect view. Article 26 of said judicial interpretation stipulates that if the limitation period in a respective case has not expired on May 1, 2015 (the effective date of the new Administrative Procedure Law), the provisions on the statute of limitation in the revised Administrative Procedure Law shall apply to that case.

If the Supreme People's Court holds the same attitude towards limitation in civil cases, the corresponding interpretation would be as follows: If the obligee knows or ought to know of the damage to his or her rights before 1 October 2017 and had that knowledge for less than two years (limitation period under the 1987 Civil Law; meaning in cases where the limitation period under the old law has not yet passed), Article 188 of the new Civil Law shall be applied, and a limitation period of in total three years shall be granted.

- (3) Article 188 shall be retroactive. This scenario is based on a previous judicial interpretation by the Supreme Court as well. Article 165 in *Opinions of the Supreme People's Court on Several Issues Concerning the Implementation of the Civil Law* - an interpretation dating from 1988 concerning the implementation of the then new 1987 Civil Law, which did not have a predecessor and therefore no previous limitation periods to refer to - states that the following: In the event, where an obligee knew or should have known of the damage to the rights before the implementation of the 1987 Civil Law and applied to a people's court for protection of his or her civil rights after the implementation of the 1987 Civil Law, the new limitation periods in article 135 and article 136 of the 1987 Civil Law were applicable. The limitation periods were calculated from January 1, 1987.

Regarding the new Civil Law, it is possible that article 188 will be retroactive as well. The official judicial interpretation could provide that if

the obligee knows or should have known of the damage to his or her rights more than two years before the implementation of the new Civil Law, but applies to a people's court for protection after the implementation of the new Civil Law in October 2017, Article 188 in the new civil law shall nevertheless apply. This would mean that the limitation period in the case would then be three years, calculated from the day on which the obligee knows or should know of the damage to the rights and the obligor. Therefore obligees who know or should know about an infringement of their rights for more than two but less than three years would be protected by the new limitation period as well.

How can obligees whose rights were infringed upon optimize their rights before the introduction of a clarifying juridical interpretation during the transition period? We consider this question under two different sets of circumstances:

- (1) If the two-year limitation period provided by the 1987 Civil Law has not expired yet, the obligee should take any possible actions to interrupt the limitation period as soon as possible.
- (2) If the two year period of limitation is expired already, but it is on 1 October 2017 still less than three years since the right holder knows or should have known about the infringement, it is still advisable to take action as if to interrupt the limitation period. If the judicial interpretation of the new Civil Law wishes to strengthen the obligee's rights and takes the position of retroactive effect, such an action might eventually still be successful.

IV. Conclusion

Other articles not mentioned above remain the same with the 1987 Civil Law or with the *Provisions Regarding the Application of Limitation of Action in Civil Cases*. In general, the new amendments regarding the statute of limitation are favorable for right holders to protect their rights. However, during a transition period there are also some questions regarding the applicability of the new Civil Law, which have yet to be resolved – some uncertainty remains. Future judicial interpretations need to be taken into consideration.

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