

Revised Statute of Limitations comes into force on 1 January 2020

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On 1 January 2020, the revised statute of limitations will come into force. Several changes affecting companies and individuals should be noted.

Overview of the Amendments

The revision's main objective was to extend the prescription periods under Swiss law for actions in tort and unjust enrichment, which are currently short in comparison to other European countries. The new prescription period for these actions is three years as of the creditor's knowledge of its claim (new art. 60 para. 1 CO and new art. 67 para. 1 CO).

Apart from this main objective, the revision amends other prescription periods with significant consequences. The prescription periods applying to actions for damages and immaterial harm due to injury or death are now longer. Under the revised statute, these actions will be statute-barred after three years (instead of one year) following knowledge of the damage but in any event after 20 years (instead of ten years) following the harmful event. This applies to both actions in contract (new art. 128a CO) as well as actions in tort (new art. 60 para. 1bis CO). The prescription periods according to the Federal Act on Product Liability (FAPL), however, remain unchanged. The above amendments may be especially important for individuals as well as med-tech and pharma-companies that face actions for product liability in tort (art. 41 et seqq. CO).

Furthermore, the prescription period for avoidance actions following bankruptcy proceedings, an unsuccessful seizure or a confirmation of a composition agreement with the assignment of assets will be extended. The revised prescription period is three years instead of two years (new art. 292 DEBL). This change may especially be important for the creditors of an insolvent debtor. They may prepare and eventually file avoidance claims during three years.

Apart from the above changes, additional prescription periods for important actions were lengthened, amongst others for actions for damages and immaterial harm resulting from traffic accidents, or for state liability claims. The respective prescription periods are now three years (new art. 83 of the Traffic Act and new art. 20 of the State Liability Act).

Furthermore, the revised law includes a provision regarding the parties' agreement on the suspension of the prescription period during settlement negotiations (new art. 134 para. 1 No. 8 CO). This allows parties to negotiate an amicable settlement without the pressure of running prescription periods.

Finally, once a prescription period has started to run, a debtor may waive its right to rely on such prescription for a maximum of ten years at a time (new art. 141 para. 1 CO). This also encourages out-of-court settlements free from the pressure of running prescription periods.

Practical Effects of the Amendments

The revised statutes of limitation will result in risks and opportunities for companies and individuals. The new prescription periods will apply to all claims that are not yet statute-barred as of 1 January 2020 (new art. 49 para. 1 of the CC's final provisions). As a result, the prescription period of an action for damages due to injury or death may be extended by another 10 years, even though such action would have been statute-barred by the beginning of 2020 pursuant to the current law. This may lead to a substantially prolonged time of uncertainty for the potentially liable entity or individual.

Furthermore, it may be unclear how contractual waivers of the prescription periods, which are common in practice, are legally qualified and applied under the revised law. This, in turn, may be a risk for creditors and an opportunity for debtors.

In addition, the revised statute of limitation may force companies and individuals to litigate about events that occurred 20 years in the past. Should their archives not go back 20 years, they may not be able to prove their cases. The Swiss Medical Association (FMH) thus recommends that doctors maintain their patients' medical history files for 20 years, especially if they may face actions for malpractice.

One should not underestimate the risks and opportunities connected with the revised statute of limitations. Pestalozzi Attorneys at Law Ltd's experts are happy to assist the respective companies and individuals with their assessment of the revision's effects.

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