

BOOK I

GENERAL PRINCIPLES

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TITLE 6

PRESCRIPTION

CHAPTER I

GENERAL PROVISIONS

Section 193/9. A claim is barred by prescription if it has not been enforced within the period of time fixed by law.

Section 193/10. After the lapse of the period of prescription for claims, the debtor is entitled to refuse performance.

Section 193/11. The periods for prescription fixed by law cannot be extended or reduced.

Section 193/12. Prescription begins and run from the moment when the claim can be enforced. If the claim is to a forbearance, prescription begins to run from the moment when the right is first infringed.

Section 193/13. If the creditor may not demand performance until he has given notice to the debtor, prescription begins to run from the moment when notice can be first given. If the debtor is not bound to perform until a given period has elapsed since the notice, prescription begins to run from the expiration of this period.

Section 193/14. Prescription is interrupted if:

The debtor has acknowledged the claim towards the creditor by written acknowledgement, by (1) part payment, payment of interest, giving security, or by any unequivocal act which implies the acknowledgment of the claim.

(2) The creditor enters an action for the establishment of the claim or for requiring performance.

(3) The creditor applies for receiving a debt to arbitration.

(4) The creditor submits the dispute to arbitration.

(5) The creditor does any act which brings an effect equivalent to entering an action.

Section 193/15. When prescription is interrupted, the period of time which has elapsed before interruption does not count for prescription.

A fresh period of prescription begins to run from the time when the interruption ceases.

Section 193/16. The creditor of an obligation for the payment of money periodically is entitled to require from the debtor, at any time before the completion of the period of prescription, a written acknowledgment of the obligation in order to obtain evidence of the interruption of prescription.

Section 193/17. In the case where prescription is interrupted due to the case under Section 193/14 (2), if the Court has passed a final judgment to dismiss the action, or the action has terminated and has been disposed of on the ground of being withdrawn or abandoned, the prescription shall be deemed to have never been interrupted.

In the case where the Court refuses to accept, return or dismisses the action on the ground of want of jurisdiction, or the action is dismissed with the right to re-enter the action in Court and the period of prescription expired pending proceedings, or would have expired within sixty days from the date of final judgment or order, the creditor shall be entitled to enter an action in Court for establishing his claim or for requiring performance of the obligation within sixty days from the date of final judgment or order.

Section 193/18. The provisions of Section 193/17 shall apply, *mutatis mutandis*, to interruption of prescription due to the case under Section 193/14 (3), (4) and (5).

Section 193/19. If at any time when the prescription would end, the creditor is prevented by *force majeure* from effecting an interruption, the prescription is not completed until thirty days after the time when such *force majeure* has ceased to exist.

Section 193/20. If prescription of claim of a minor, or a person of unsound mind whether adjudged incompetent or not, would have expired while the said person does not acquire full capacity, or within one year from the day when the said person is without a legal representative or a guardian, if is not completed until the expiration of one year after he has acquired full capacity or has a legal representative or guardian, as the case may be. If the period of prescription of the claim is shorter than one year, the shorter period of time shall apply in place of the said period of one year.

Section 193/21. If prescription of claim of a minor, an incompetent or a quasi-incompetent against his legal representative, guardian or curator would have expired

while the said person does not acquire full capacity, or within one year from the day when the said person is without legal representative, guardian or curator, if is not completed until the expiration of one year after he has acquired full capacity or has a legal representative, guardian or curator, as the case may be. If the period of prescription of the claim is shorter than one year, the shorter period of time shall apply in place of the said period of one year.

Section 193/22. If prescription of claims between spouses would have expired before within one year after dissolution of marriage, it is not completed until the expiration of one year after dissolution of marriage.

Section 193/23. If prescription of a claim existing in favour of or against a deceased would have expired within one year after the date of the death, the period of prescription is not completed until the expiration of one year after death.

Section 193/24. The benefit of prescription can be waived only after it has been completed, but such waiver does not prejudice the right of third persons, or the surety.

Section 193/25. When prescription is completed, its effect relates back to the day when it began to run.

Section 193/26. With the principal claim the claims for accessory acts of performance dependent upon it are also barred by prescription, even if the particular prescription applying to the accessory claim is not yet complete.

Section 193/27. The barring of the principal claim by prescription does not prevent a mortgagee, a pledge, holder of a right of retention or a creditor who has preferential right on property of the debtor detained by him, to enforce his right out of the mortgaged, pledged or detained property. But in exercising the right the creditor cannot obtain more than five years for arrears of interest.

Section 193/28. If any act of performance is done in satisfaction of a claim barred by prescription, the value of such performance may not be demanded back, even if the performance has been affected in ignorance of the prescription.

The provisions of paragraph one shall apply to a contractual acknowledgment of liability in writing and to the giving of security by the debtor, but it cannot be referred against the former surety.

Section 193/29. When prescription has not been set up as a defense, the Court cannot dismiss the claim on the ground of prescription.

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CHAPTER II

PERIOD OF PRESCRIPTION

Section 193/30. The period of prescription for which no other period is provided by law is ten years.

Section 193/31. The period of prescription for claims of the Government for taxes and rates is ten years. As to other claims of the Government relating to obligations, the provisions of this title shall apply.

Section 193/32. The period of prescription for a claim established by a final judgment, or by a contract of compromise is ten years, even if the claim itself is subject to any period of prescription.

Section 193/33. The period of prescription is five years for the following claims:

- (1) Arrears of interest
- (2) Sums payable for the purpose of paying off the principal by installments.
- (3) Arrears of rent or hire of property except the rent of movables under Section 193/34 (6).
- (4) Arrears of salaries, annuities, pensions, allowances for maintenance and all other periodical payments.
- (5) Claims under Section 193/34 (1) (2) and (5), so far as they are not subject to the period of two years.

Section 193/34. The period of prescription is two years for the following claims:

- (1) Arrears of interest
- (2) Sums payable for the purpose of paying off the principal by installments.
- (3) Arrears of rent or hire of property except the rent of movables under Section 193/34 (6).
- (4) Arrears of salaries, annuities, pensions, allowances for maintenance and all other periodical payments.
- (5) Claims under Section 193/34 (1) (2) and (5), so far as they are not subject to the period of two years.

Section 193/34. The period of prescription is two years for the following claims:

- (1) Claims of merchants, industrialists manufactures, artisans and those who practice industrial arts, for delivery of goods, performance of work and care of others' affairs, including disbursements, unless the service was rendered for the business of the debtor.
- (2) Claims of those who engage to agriculture or forestry, for delivery of agricultural or forest products, so far as the delivery is for the domestic use of the debtor
- (3) Claims of carriers for passengers or goods, or if messengers, for fare, freight, hire and fees, including disbursements.
- (4) Claims of innkeepers or hostel keepers and those who make a business of providing food and drink, or those who make a business of rendering entertainment service according to the law on places of entertainment services, for supplying lodging and food or other services rendered to the guests, including disbursements.

- (5) Claims of those who sell lottery tickets, rackets or similar tickets for the sale of the tickets, unless the tickets are delivered for further sale.
- (6) Claims of those who make a business of letting movables, for the rent.
Claims of those who, without belonging to the classes specified in (1), make business of the care of
- (7) others' affairs or the rendering of service, for the remuneration due to them from the business, including disbursements.
- (8) Claims of those who are in private service, for the wages, or other remuneration for services, including disbursements; also claims of the employers for advances made upon such claims.
Claims of employees, whether they be permanent, temporary or day labourers, and apprentices,
- (9) for the wages or other remuneration, including disbursements, or claims of the employers for advances made upon such claims.
- (10) Claims of masters of apprentices, for the premium and other expenses agreed upon in the contract of apprenticeship and disbursements.
- (11) Claims of owners of educational institutions or nursing home, for instruction fees and other fees, or medical fees and other expenses, including disbursements.
- (12) Claims of those who receive persons to be maintained or educated, for services including disbursements.
- (13) Claims of those who receive animals to be maintained or trained, for services, including disbursements.
- (14) Claims of teachers, for their fees.
- (15) Claims of practitioners in medicine, dentists, nurses, midwives, veterinary surgeons or those who practice in other related fields of medicine, for their services, including disbursements.
- (16) Claims of lawyers or those engaged in legal profession including expert witnesses for their services, including disbursements, or claims of the parties for advances made upon such claims.
- (17) Claims of engineers, architects, auditors or those engaged in other independent professions, for services including disbursements, or claims of the employers for advances made upon such claims.

Section 193 /35. Subject to Section 193/27, prescription of claims arising from the acknowledgment of liabilities by the debtor in writing or in giving of security under Section 193/28 paragraph two is two years from the date of acknowledgment of liabilities or of giving of security.