

# CY Japan Legal Update

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## Extinctive Prescription

**The amendment of part of the Civil Code (law of obligations) was enacted and will be enforced within three years from June 2, 2017 (Part 2 - Extinctive Prescription))**

Yasuyuki Kuribayashi

Following the previous article covering the amendment of the law of obligation, especially pre-formulated terms and conditions, this article will introduce the amendment to the provisions concerning extinctive prescription (statute of limitations) for claims. The Amended Code has simplified and standardized the provisions of the periods for extinctive prescription and furthermore, the grounds for avoiding the completion of prescription (lapse of the statute of limitations period). The details of the amendment are as follows.

### 1. Standardization of the prescription period of extinctive prescription

Under the Amended Code, if a claim is not exercised within five (5) years from the time when the claimholder knows that it can exercise its rights (“subjective starting point”) or not exercised ten (10) years from the time when the claimholder may exercise its rights (“objective starting point”), in principle, the claim will become extinct by prescription. The short term extinctive prescription of one to three years (including room charges, food and beverage charges, accounts receivable, and medical treatment fee) stipulated in the current Civil Code and extinctive prescription in commercial matters of five years stipulated in the Commercial Code will be abolished and the prescription period for the extinctive prescription will be standardized.

In regard to the above principle, there are three types of exceptions under the amended Civil Code. First, a “claim for periodic payments” (right to receive payment of money or other items during a certain period) will become extinct from ten (10) years from the subjective starting point or fifteen (15) years from the objective starting point. Second, a “claim for compensation of damages based a tort” will become extinct three (3) years from the subjective starting point or twenty (20) years from the objective starting point. Third, a “claim for compensation of damages due to harm of life and limb” (regardless of whether the claim is based on a tort) will become extinct five (5) years from the subjective starting point or twenty (20) years from the objective starting point.

The prescription period after the above amendment will apply to claims accruing after the enforcement date of the amendment (the “Enforcement Date”). (The prescription period prior to the amendment will apply to claims accruing prior to the Enforcement Date.) Provided, however, that for a claim for compensation of damages based a tort, special provisions will be provided and if twenty (20) years have passed from the time of the tort on the Enforcement Date, the Amended Code will be applied. For a claim based on a tort of compensation of damages due to harm of life and limb, if three (3) years have not passed from the time that damage and the tortfeasor are known at the time of the Enforcement Date, the Amended Code will apply.

## 2. Grounds for avoiding completion of prescription

### (1) Introduction of the concept of renewal of prescription and suspension of completion of prescription

As a method of preventing the completion of prescription, the Amended Code has introduced two concepts of “renewal” of prescription (the prescription period newly starts progressing) and “suspension of completion” of prescription (until the grounds terminates, the completion of prescription is suspended).

First, as “grounds for suspension of completion of prescription”, grounds including (i) judicial claim, (ii) filing for demand for payment, (iii) filing for settlement or conciliation), (iv) participation in bankruptcy proceedings), (v) compulsory execution, (vi) exercise of security interest), (vii) provisional seizure, (viii) provisional disposition, (ix) demand and (x) natural disaster are provided.

Then, in regard to (i), (ii), (iii) and (iv), if the right becomes vested with an unappealable judgement or a final judgment having the same effect, that will be a “renewal ground” and the prescription period will start to newly progress. As well, in regard to (v) and (vi), if such procedures terminate and the claim cannot be fully collected, that will be a “renewal ground” and in regard to the remaining part, the prescription period will start to newly progress. In regard to (vii) and (viii), within six (6) months after such ground has terminated, the prescription will not be completed. In regard to (ix), within six (6) months from the demand, the prescription will not complete (the effective of suspension of completion of prescription will not be given even if the new formal demand is made during such six (6) month period). In regard to (x), within three (3) months from the extinguishment of such impediment, the prescription will not be completed.

(2) Newly establishing of the system of suspension of completion of prescription by mutual consultation

A provision has been newly established that during the period in which consultations continue for rights between the parties, completion of prescription is suspended. Specifically, if an agreement is made in writing that consultations will be conducted for rights between the parties, prescription will not be completed until the earlier of (i) one (1) year has passed from when the agreement was made, (ii) if such period has passed in the case the consultation period of less than one (1) year is provided by the parties in such agreement or (iii) if a six (6) month period has passed from the time notice is given for the refusal of proceeding with consultation by one of the parties. Even in the period in which the completion of prescription is suspended by agreement, the parties may agree to suspension of completion of prescription again and it is possible to make such agreement within five (5) years from the original completion of prescription period. Therefore, completion of prescription may be extended up to a maximum of five (5) years.

For more information, please contact :

Yasuyuki Kuribayashi, Partner  
[yasuyuki.kuribayashi@city-yuwa.com](mailto:yasuyuki.kuribayashi@city-yuwa.com)