

Statute of limitation: A multi-jurisdiction comparative study

The Dispute Resolution Practice Group within LNI has gathered and discussed the statute of limitation (prescription) rules applicable in the various jurisdictions of its members.

You can read the individual **Country Reports** below.

This short summary is intended to provide a high-level overview of the main trends, similarities or differences, which have been revealed by this study. Specific queries should be addressed to the relevant LNI Members in the respective jurisdictions.

What is the legal nature of prescription?

Prescription is, in most jurisdictions, a matter of substantive / material law, although a certain dual character (procedural laws influencing the manner how limitation periods are calculated, interrupted ...) is pointed out by different members. One of the consequences is that the argument has to be raised by the parties (not *ex officio* by the judge).

In India, however, the statute of limitation is a matter of procedural law.

Which statute of limitation rules are applicable if a local judge has to apply foreign law to a dispute?

In almost all analysed jurisdictions, the local judge will apply the limitations that are applicable under that foreign law. A notable exception is India, where the procedural nature of prescription implies that, in general, the Indian judge will apply the Indian Limitation Act of 1963.

However, lots of jurisdictions exempt the situation where the foreign law would conflict with the public policy laws of the forum. Further, in a number of jurisdictions, prescription rules are not considered a matter of public policy.

May a party decide to waive the application of the statute of limitation?

Each country has its own specificities or exceptions where a waiver is possible or not (please refer to the Country Reports for more details). The general rules are represented in Table 1 below:

WAIVER OF THE STATUTE OF LIMITATION		
Jurisdiction:	Anticipatory waiver	Waiver after the occurrence
Austria, Belgium, Bulgaria, France, Luxembourg, Netherlands, Serbia, Sweden	Not possible	Possible
Brazil, England and Wales, Germany, Spain, Switzerland	Possible	Possible
China, India, Turkey	Not possible	Not possible

[Table 1]

When is a claim considered time-barred?

Table 2 provides a general overview of the main limitation periods applicable in the various jurisdictions. Special attention needs however to be paid to the starting date of the period. In lots of jurisdictions, if such starting date is linked to subjective factors (e.g. knowledge), a maximum duration since the occurrence of the event is foreseen. For more details, please refer to the Country Reports.

MAIN LIMITATION PERIODS				
Jurisdiction:	General rule (if no specific limitation period applies)	Contracts	Torts	Unjust enrichment
Austria	30 years	30 years if no shorter period is foreseen	Generally 3 years	Generally 30 years
Belgium	30 years	5 years	10 years	10 years
Brazil	10 years	10 years	3 years	3 years
Bulgaria		5 years if no shorter limitation provided by law	5 years	5 years
China	3 years unless otherwise provided by law	3 years unless otherwise provided by law	3 years unless otherwise provided by law	3 years unless otherwise provided by law
England & Wales		6 years unless otherwise provided by law	6 years (3 years for personal injury) unless otherwise provided by law	6 years unless otherwise provided by law
France	5 years	5 years	10 years	5 years
Germany	3 years	3 years	10 years (30 years in case of body injuries)	3 years
India	3 years	3 years	1 to 3 years	
Luxembourg	30 years	30 years (10 years in commercial matters)	30 years	30 years
Netherlands	20 years	5 years	5 years	5 years
Serbia		10 years (3 years in commercial matters)	3 years	10 years
Spain	5 years	5 years	1 year	5 years
Sweden	10 years	10 years (3 years for claims against consumers)	10 years	10 years
Switzerland	10 years	10 years	3 years	3 years
Turkey	10 years	10 years	2 years	2 years

[Table 2]

Which elements suspend limitation period?

The suspension of the prescription implies that once the cause of suspension has disappeared, the period of limitation will start running again where it had stopped.

Several countries allow for different causes of suspension of the limitation period, which are then mainly defined by law, sometimes completed by other situations admitted by case law: Austria, Belgium, Bulgaria, China, France, Luxembourg, Netherlands, Serbia and Switzerland.

Other jurisdictions appear to be more restrictive and allow a suspension only in limited cases:

- Brazil: very few possibilities of suspension and mostly related to family law.
- Germany: only in case serious negotiations take place between parties.
- Sweden: only under very special circumstances.

In England & Wales, there are no legal grounds for suspension, but the parties can agree on a standstill agreement.

Finally, some countries exclude, as a general rule, suspensions of the statute of limitations (with minor exceptions): India, Spain and Turkey.

Which elements cause an interruption of the statute of limitation?

The interruption of the prescription ignores the time elapsed until the date of the interruption, and a new limitation period (in general with equal duration) starts to run as from that date.

The most common causes of interruption are ■ the acknowledgment / formal recognition of the obligation by the obligor / debtor and ■ taking judicial action against the obligor / debtor, sometimes completed by ■ other acts revealing the obligee's / creditor's intention to enforce his claim. Other causes of interruption are mentioned in the Table 3 hereafter.

MAIN CAUSES OF INTERRUPTION				
Jurisdiction:	Acknowledgment by the obligor	Filing a claim in court	Enforcement of the claim	Other
Austria	X	X		
Belgium	X	X	X	Formal notice sent by registered mail (under certain conditions)
Brazil	X	X	X	
Bulgaria	X	X	X	
China	X	X		Obligee formally requests the obligor to fulfil its obligations
England and Wales				Generally not possible to argue interruption, only to agree time can "stand still"
France	X	X	X	
Germany	X	X	X	
India				Death of the obligee Good cause (discretion of the courts)
Luxembourg	X	X	X	
Netherlands	X	X	X	Obligee requests the obligor to fulfil its obligations in writing
Serbia	X	X	X	
Spain	X	X		Out of court claim received by the addressee
Sweden	X	X	X	Obligee requests the obligor to fulfil its obligations in writing
Switzerland	X	X	X	
Turkey	X	X	X	

[Table 3]

Which are the effects of the expiry of the limitation period?

The overall principle, with a few nuances, is that the expiry of the limitation period has no impact on the existence of the obligation as such, but the obligation may no longer be enforced (provided the obligor/debtor raises the defence of the expiry of the limitation period).

Is the setting off of a time-barred claim still possible?

In most jurisdictions it is possible to set off a time-barred claim (mainly under the condition that it was possible to set this claim off, before the expiry of the limitation period).

However, in some countries, such a set off is no longer possible once the claim is time-barred: Belgium, England & Wales, Luxembourg and India. In Spain, it is only possible to set off a time-barred claim if both parties agree to it.

Country Reports

Jurisdiction:	LNI MEMBER FIRM	Contact
Austria	BRAUNEIS KLAUSER PRÄNDL	Gerald Otto
Belgium	PHILIPPE & PARTNERS	Marc Gouden
Brazil	AZEVEDO SETTE	Felipe Moraes
Bulgaria	BOYANOV & CO	Kina Chuturkova
China	LIUMING INTERNATIONAL	Wei Xin
England and Wales	Hamlins LLP	Amanda Burge
France	J.P. KARSENTY & ASSOCIES	Thomas Ricard
Germany	Beck Rechtsanwälte	Michael Haas
India	UNIVERSAL LEGAL ADVOCATES	Mohit Kapoor
Luxembourg	THEWES & REUTER	Marc Thewes – Pierre Reuter
Netherlands	TeekensKarstens advocaten notarissen	Michiel Teekens
Serbia	NKO Partners	Danica Milic
Spain	Toda & Nel-lo	Albert Faus
Sweden	TIME DANOWSKY ADVOKATBYRA	Andreas Eriksson
Switzerland	BUDIN & PARTNERS	Nicolas Genoud
Turkey	ARSLAN LAW FIRM	Ramazan Arslan

Brazil

1. Legal nature of the statute of limitations:

a. Outline of general position in your own jurisdiction

The Brazilian Civil Code interprets the statute of limitations without the view of a substantive right and distinguishes the limitation on the cause of action (“prescrição”) from the limitation of the substantive right (“decadência”). Doctrine and case law vary regarding understandings of, for example, when the accrual of cause of action begins.

In general, in Brazil, the claim thesis is adopted, in which once a right is violated, accrual of cause of action arises for the holder of a particular right that can be extinguished by expiry of its limitation period.

Article. 189 of the Brazilian Civil Code: Once a right is violated, the holder is entitled to sue, which is extinguished by expiry of its limitation period (“prescrição”), within the limitation periods mentioned in Articles 205 and 206.

The limitation periods vary according to the object of the claim and can go up to a maximum of ten years (article 205, Civil Code), a period considered also as a general rule. There are several specific limitation periods regarding the object of the claim. The limitation period starts to run from the date accrual of cause of action.

b. Outline of general position where local jurisdiction but foreign law applies

Under Brazilian law, the place of formation of the contract defines the competent jurisdiction and, in the case of an international contract, the parties are free to define the applicable law. If there is no agreement between the parties, the contract is considered concluded at the place where consensus was achieved (Article 435, Civil Code).

c. Waivers

The parties may waive the limitation periods expressly or tacitly (in cases where this is not alleged by either party). The only impediment to such a waiver is if it affects the right of a third party.

Art. 191. The waiver of limitation may be express or tacit, and will only be valid, if made without prejudice to third parties, after the limitation period is consummated; the waiver is tacit when it is presumed from facts of the interested party, incompatible with the limitation period.

Expiry of limitation periods may be raised at any level of jurisdiction by any of the parties.

2. Limitation periods

The statute of limitations is comprised of two categories: the general and special terms. The general term is the one provided by article 205 of the 2002 Civil Code. According to it, when the law does not expressly mention any other hypothesis, the limitation period will be of 10 (ten) years – as a general rule – as of the accrual of the cause of action. Special periods, on the other hand, are shorter limitation periods for other rights to be exercised. The Civil Code, in its article 206, stipulates for instance several limitation periods of one, two, three, four, and five years for certain rights.

Insurance claims

The limitation period for insurance claims is of 1 (one) year, in accordance with article 206, II, of the Brazilian Civil Code.

Interest claims

In accordance with the Brazilian Civil Code, article 206, § 3º, III, interest claims’ limitation period is of 3 (three) years, payable in periods no longer than one year, with or without capitalization.

Unjust enrichment (“Enriquecimento sem causa”)

In accordance with Brazilian Civil Code, article 206, § 3º, IV, the limitation period regarding unjust enrichment (“Enriquecimento sem causa”) is of 3 (three) years.

Tort claims

In accordance with the Brazilian Civil Code, article 206, § 3º, V, the limitation period regarding tort claims is of 3 (three) years.

Contracts

The general rule for contractual law and contractual claims is a limitation period of 10 (ten) years, although commercial parties may agree otherwise. The limitation period to be considered in cases of remedy based on contractual breach is of 10 (ten) years, applying article 205 of the Civil Code in accordance with the consolidated position of the Superior Court of Justice (STJ) on the matter ¹.

This summary intends only to provide some examples of main rules about the limitation of actions. There are several specific rules about the limitation periods in Brazilian Law. The general rules to consider are in the Brazilian Civil Code, including article 206.

3. Starting date

Generally, the limitation period starts to run from the accrual of the cause of action. Although there are some doctrinal discussions on the subject in specific situations, normally, the starting point is the beginning of the possibility of exercising the claim, i.e. when the violation of the right occurs.

4. Suspension

There are very few possibilities of suspension of limitation periods in accordance with Brazilian Law. Most are related to Family Law, some examples are the provisions on Article 197, 198, and 199 of the Brazilian Civil Code.

5. Interruption (the limitation period runs anew)

Article 202 of the Civil Code deals with the causes of interruption of the statute of limitations. As a rule, the interruption of the limitation period results from the creditor's initiative (items I to V). The exception is item VI, in which it is the debtor himself, by an unequivocal act, even if extrajudicial, that implies recognition of the right.

Furthermore, article 202, I, of the Civil Code states: "the interruption of limitation period, which can only occur once, will occur by an order of the judge, even if the judge has no jurisdiction, who orders the service of process, if the interested party files it within the deadline and in the form provided by procedural law". Generally, the most common way to interrupt the limitation period is by judicial subpoena.

6. Effects of the expiry of the limitation periods.

Expiry of the limitation period turns the credit unenforceable and, as a rule, causes the nullity of the execution, as provided in art. 618, Subparagraph I of the Brazilian Code of Civil Procedure.

¹ EREsp 1.280.825-RJ, rel. min. Nancy Andrighi, 2ª Seção, DJe 14/05/2019.