



NEWSLETTER JDP – AMENDMENTS REGARDING LIMITATION OF CLAIMS

The newsletter highlights the most crucial issues of the upcoming regulation amending the Civil Code and the Civil Procedure Code with regard to limitation periods of claims on an estate and their consequences for companies and other business entities operating in Poland.

Your attention should be drawn in particular to the mandatory nature (as it has been the case until now) of the aforementioned provisions. As a result, the Polish law does not allow parties to contracts to determine limitation periods in a way that would be different than as provided for by these mandatory provisions. In practice, limitation periods can be neither reduced nor extended by parties to a legal relationship.

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AMENDMENTS REGARDING LIMITATION OF CLAIMS

PERIODS OF LIMITATION

As of 9 July, the general period of limitation will be reduced from 10 years to 6 years. The period of limitation for claims resulting from business activity and for claims pertaining to periodical performances will still be 3 years.

Furthermore, the method for determining the moment when the period of limitation of claims on an estate has passed will change, including claims resulting from business activity and claims pertaining to periodical performances. **According to the proposed provisions, the end of the period of limitation should fall on the last day of the year in which the period of limitation passes, unless the period of limitation is shorter than 2 years.**

In practice, it means **an extension of the limitation period of three years counted from the date when the claim became due by the period until the end of the calendar year.**

Example: *The claim for the payment of consideration for construction works will be due on 10 July 2018. It will not expire on 10 July 2021, as it has been the case so far, but on 31 December 2021.*

The limitation period of a claim confirmed by a non-appealable order of a competent authority (court, arbitration court or another authority entitled to hear cases of a given kind) **or by a settlement approved by the court** (made before court, arbitration court or a mediator) will be reduced to 6 years. However, if the claim established in this way includes periodical performances, the claim for periodical performances due in the future will expire after 3 years.

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PURSUING CLAIMS AGAINST CONSUMERS

As of 9 July 2018, amended provisions on pursuing time-barred claims against consumers will come into force. Until now, the principle was that a time-barred claim against a consumer could be pursued in the court or out of the court and only if the defendant (consumer) raised a justified objection, the court would dismiss the claim on grounds of a passed period of limitation. The amendments provide that **after the limitation period has passed, pursuing a time-barred claim against a consumer will be inadmissible.**

Only under specific circumstances the court will be able not to take into consideration the lapse of limitation period against the consumer if it is required by the equity principles. To that effect, the court should consider in particular: i) overall length of the limitation period, ii) length of a period between the end of the limitation period and the moment of commencement of pursuing the claim and iii) nature of the circumstances which have caused the delay in pursuing the claim by the entitled party, including the influence of the conduct of the debtor on the delay in pursuing the claim.

The abovementioned amendments will cause in practice that pursuing time-barred claims against consumers by large debt collection entities will become unprofitable.

TRANSITIONAL PROVISIONS

The proposed regulation comprises fairly complicated transitional measures that will apply to both:

- i. claims that arose after 9 July 2018,
- ii. claims that arose before 9 July 2018, which have not expired up to that date.

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As a result entrepreneurs, especially those who have debts towards consumers, must carry out a detailed analysis of their existing claims and determine their period of limitation based on new regulations.

As of 9 July 2018, the amended provisions will apply to claims that arose before 9 July 2018, which have not expired up to that date.

In practice it means that if the amended period of limitation is shorter than that under current legal provisions (this mostly refers to claims that would be subject to a 10-year limitation period under previous provisions, shortened to a 6-year period under the amended provisions), it should begin to run anew on 9 July 2018. However, if under previous provisions (the 10-year period) the claim was to expire earlier, the period of limitation should end on that earlier date.

Example: *A claim became due on 1 July 2016. The original 10-year period of limitation would have passed on 1 July 2026. According to the transitional provisions, the new 6-year limitation period will run as of 9 July 2018. Therefore, the claim will become time-barred on 31 December 2024.*

Example: *A claim became due on 1 July 2013. The original 10-year period of limitation would have passed on 1 July 2023. According to the transitional provisions, the new 6-year limitation period will run as of 9 July 2018. However, in this case the claim will become time-barred earlier, on 1 July 2023.*

Different rules apply to **claims pursued by consumers**. If those claims arose before 9 July 2018 and their period of limitation has not expired up to that date, the previous provisions shall apply.

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In contrast, with regard to time-barred **claims against consumers** that have been pursued and the consumer has not raised any objection regarding the lapse of the period of limitation by 9 July 2018, after 9 July 2018 amended provisions will apply.

CORRESPONDING AMENDMENTS TO PROCEDURAL RULES

As of 9 July 2018, the **indication of the date on which the claim became due** will be added to the catalogue of mandatory elements of **proceedings regarding claims**.

Should the plaintiff not indicate the date on which the claim has become due, the presiding judge will request the plaintiff to remedy that omission within 7 days. In case of a failure to remedy the said omission, the pleading will be returned by the court. According to Article 130 § 2 of the Civil Procedure Code, a returned pleading does not produce the effects which the law provides for the filing of a pleading with the court. **Thus, if a pleading is returned, the run of the period of limitation will not be interrupted.**

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