****** Law of Prescription**

- (National Credit Amendments Act promulgated on 13 March 2015)
- The Prescription Act provides that "a debt shall be extinguished by prescription after the lapse of the period which in terms of the relevant law applies in respect of the prescription of such debt",[1] prescription does not depend on the effluxion of time alone.
- This has the effect that, even if the prescription period has elapsed, the debt in question may be enforced if the debtor has not raised prescription as a defense.
- The Prescription Act contains certain provisions indicating that, even if the applicable prescription period has elapsed, the debt in question may in effect not yet be "extinguished". The relevant principles are set out in paragraphs below.
- ***Lack of knowledge on the part of the creditor***: If the debtor wilfully prevents the creditor from knowing that the debt exists, prescription will not begin to run until the creditor becomes aware that the debt exists.[2] The courts have held that the word 'wilfully' in this subsection means 'deliberately' or 'intentionally', not 'fraudulently'. A debt is also not deemed to be due until the creditor has, or ought to have had knowledge of the identity of the debtor and of the facts from which the debt arises.
- ***Delay of the completion of prescription under certain circumstances***: Even if the applicable prescription period has elapsed, the completion of prescription may be *delayed in certain circumstances, such as absence of the debtor from the Republic, or the death, insolvency or liquidation of the debtor*.[3]
- ***Acknowledgement of liability by the debtor***: Further, even if the applicable prescription period has elapsed, it may appear (Tacit Acknowledgement) that the debtor had acknowledged liability for the debt during the running of the prescription period, thereby interrupting the running of prescription and causing it to begin to run afresh.[4]
- *Service of summons*: Service of legal process interrupts prescription indefinitely, but the interruption lapses "if the creditor does not successfully prosecute his claim" (under court rules)[5]. If judgment is obtained against the debtor, a new prescription period of 30 years begins to run. [6]
- ***The existence of a reciprocal contractual debt***: The Prescription Act provides in respect of reciprocal contractual debts that one such debt does not become prescribed before the other, so that the interruption of prescription in respect of contractual debt has the effect of keeping alive a reciprocal debt, even if all requirements for prescription have been met in respect of such reciprocal debt.[7]
- ***Payment:*** Even if prescription has taken effect, "payment by the debtor of a debt after it has been extinguished by prescription shall be regarded as payment of a debt".[8] A debt can therefore be validly paid by the debtor if he or she for whatever reason has not raised prescription as a defense.
- Section 17(1) of the Prescription Act provides that a court shall not "of its own motion" take notice of prescription. Provided that a court may allow prescription to be raised at any stage of the proceedings.