

ADMINISTRATION OF ESTATE: APPLICABLE TIME BAR FOR CLAIMS AGAINST THE DECEASED'S ESTATE

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After the death of the deceased, the personal representatives will need to make an application to the Court to obtain a Grant of Probate (if the deceased made a Will) or Grant of Letters of Administration (if the deceased died intestate). After the relevant Grant has been obtained, the personal representative will call in the deceased's assets. Before distributing the assets to the beneficiaries, the personal representative will be required to settle the lawful debts of the deceased, as well as the reasonable testamentary and proper funeral expenses.

However, an issue may arise if a significant period of time has elapsed between the date on which the debt was payable and the date that a claim is made to recover the said debt from the Estate. Generally, under the Limitation Act (Cap. 163), if more than six (6) years have passed since the debt became payable, the debt which was payable prior to the deceased's death will not be recoverable from the Estate. However, this position does not apply to debt which only became payable after the deceased's death.

While there is no direct local case law on this issue, there are English and Canadian authorities that suggest that (a) a debt which was payable prior to the deceased's death, the six years' time bar begins to run even if no personal representative has been appointed; (b) however, for a debt which was payable only after the deceased's death, time will not run until the Grant has been obtained.

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Illustration

The practical effect of this can be seen in a case where the deceased passed away on 1 January 2011, but the Grant was only obtained on 1 January 2016.

If A demanded a return of the loan from the deceased, and the deceased acknowledged having received such loan on 31 December 2009, the time bar in respect of this debt starts to run from 31 December 2009. To ensure that the claim is not time-barred, A has to file a claim against the Estate and/or get the Estate to acknowledge such debt within six years, *ie* by 30 December 2015. It is not open for A to wait until the Grant has been obtained before submitting his claim, as the claim will be time-barred by 30 December 2015. The personal representative would not be liable to repay the loan if A did not file a claim against the Estate or if the personal representative of the Estate had not acknowledged the debt before 30 December 2015. In the case where the personal representative has acknowledged the debt, the 6-year time bar would only start to run from the time of the acknowledgement.

A different result relates to recurring expenses, for instance, monthly maintenance fees for the deceased's condominium unit which are payable on the first day of each month. For maintenance fees which were payable before the deceased's death, the time bar starts to run from the date of the respective invoice. However, for maintenance fees that became payable only after the deceased's death (*ie* maintenance fees payable on 1 February 2011 and in the subsequent months), the time bar only starts to run from 1 January 2016, the date on which the Grant was obtained. As such, the personal representative of the deceased's estate would be liable to pay the maintenance fees which accrued since 1 February 2011 as long as the claim is made before 31 December 2022. The computation of the time bar is different.

Conclusion

As can be seen from the foregoing, it is important to determine if the debt against the Estate was payable before or after the deceased's death. This may have a serious implication for a creditor's claim against the Estate, and the creditor will not be allowed to pursue his or her claim against the Estate if the Estate raises the defence of time-bar.

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