

Overdraft

***Dies a quo* of the prescription**

Par Besart Buci le 13 April 2026

The ten-year statute of limitations for a claim arising from an overdraft begins to run each time the balance is settled and acknowledged by the parties. However, when the contractual relationship continues, the balance is *de facto* carried over to a new account, such that these successive settlements give rise to new statutes of limitations. Termination of the contract, on the other hand, results in a final account statement, makes the balance due and payable, and triggers a new (and final) statute of limitations period. These are the main findings of the Federal Supreme Court in its decision [4A 85/2025](#) of February 9, 2026.

In December 2008, the shareholder and director of a company entered into, in his personal capacity, a current account credit agreement with a bank for a maximum amount of CHF 200,000 at an annual interest rate of 6.75 %. This credit, intended exclusively to support the activities of the struggling company, was secured by a pledge of approximately 370,000 of the company's registered shares, deposited with the bank.

The terms of the credit were subsequently renegotiated on several occasions. In June 2010 and January 2011, the director signed two acknowledgments of debt recognizing that he owed the bank approximately CHF 186,000 and then CHF 167,000, with an interest rate of 9.95 % per annum.

After several formal notices went unanswered, the bank terminated the administrator's personal loan agreement on January 10, 2012, and issued another formal notice. After more than eight years without contact, the bank filed a debt collection proceeding against the administrator on June 6, 2021 (more than ten years after the acknowledgments were signed). The administrator objected, citing the statute of limitations on the debt. The bank prevailed before the cantonal courts.

The Federal Supreme Court first outlined the characteristics of a revolving credit agreement. This is an unspecified contract in which the borrower has the option, within the credit limit set for them, to make withdrawals and thereby become the bank's debtor. Withdrawals and repayments are extinguished by set-off ([Art. 120 CO](#)), and novation occurs when the balance is determined and acknowledged by the parties ([Art. 117 para. 2 CO](#)). The contract does not constitute an acknowledgment of debt within the meaning of [Art. 82\(1\) LP](#), neither for the credit limit nor for the account's debit balance, since its amount is variable (see on this subject Fischer, [cdbf.ch/439](#)). On the other hand, a "statement of account" signed by the debtor constitutes an acknowledgment of debt, except where the current account relationship

continues, in which case the balance is *de facto* carried over to a new current account.

With regard to the statute of limitations, the bank's claim is subject to the ten-year limitation period ([Art. 127 CO](#)) and begins to run as soon as the claim becomes due ([Art. 130\(1\) CO](#)). However, the indivisibility of current account claims results in "a deferral of the due date, as well as a suspension of the statute of limitations for claims entered into the current account." The Federal Court notes that legal doctrine holds that the statute of limitations begins to run each time the account balance is settled and acknowledged, but at least twice a year. It adds that other authors consider that the statute of limitations "only comes into play when one or the other party terminates the current account relationship, insofar as the account balance only becomes due at that time" (see [Luc Thévenoz/Fabien Liégeois, The Effects of the New Rules on the Statute of Limitations in Banking and Financial Law, RSDA 2021, pp. 121–133, p. 123](#)).

The Federal Court holds that a periodic closing of the balance can indeed trigger the statute of limitations period through the effect of novation. It specifies, however, that in the event of continued contractual relations, the balance is automatically carried over to a new checking account, *neutralizing* the effects of a prior closing. Furthermore, termination of the contract results in a closing of the account during the accounting period and makes the balance due, thereby triggering a new statute of limitations period.

In this case, the Federal Court holds that the *dies a quo* cannot be set at the time of signing the last "well-founded" statement in January 2011, contrary to the administrator's contention. Indeed, after this signature, the parties did not settle the account balance, so that the contractual relationship continued and the balance was automatically carried over to a new checking account. It was only the termination on January 10, 2012, that caused the checking account to be closed and thus triggered the start of the statute of limitations period. The lawsuit filed in June 2021 was therefore brought within the ten-year statute of limitations.

In our view, this ruling confirms that while the statute of limitations may, in principle, begin to run each time the current account balance is closed, such a scenario remains largely theoretical in practice. Indeed, the balance is the subject of periodic statements that are deemed to have been approved by the customer (pursuant to the presumption of receipt and approval mechanisms provided for in the general banking terms and conditions). Each account statement thus entails an acknowledgment of the balance and, consequently, a novation, which triggers a new statute of limitations period. Under these circumstances, the expiration of a ten-year period appears practically impossible as long as the current account relationship continues.

It follows that, despite the distinction noted by the Federal Court, only the termination of the current account agreement constitutes, in practice, the decisive moment for the commencement of the statute of limitations, in that it terminates the relationship and results in a final settlement of the balance (see in this regard [Luc Thévenoz/Fabien Liégeois, op. cit., p. 123](#)). This approach, moreover, corresponds to the solution ultimately adopted by the Federal Court in the judgment under discussion.

