

Pre-Action Letters in Spain: Overview

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A Practice Note providing an overview of the key issues to consider before issuing or responding to a **pre-action letter** in **Spain**.

This Note provides an overview of **pre-action** correspondence from a potential claimant or their lawyer before initiating legal proceedings, which addresses a potential claim or suit, or defence to a potential claim or suit. In most jurisdictions, there are no requirements to send or respond to a **pre-action letter** for many types of actions. In those actions, parties can commence proceedings without making an offer of compromise or taking any other step.

Regardless of the **pre-action** requirements, it is generally customary for parties to send a warning or demand **letter** to the adverse party before commencing court proceedings. It is also customary for adverse parties to reply, even if there is no requirement to respond. This is the case, however, unless the situation demands otherwise (see *Disputes Not Suitable for Pre-Action Letters*).

This Note is a quick guide to the practice of notifying the prospective defendant before an action commences in **Spain** and its use and effectiveness in resolving disputes amicably. It also provides practical drafting tips for both drafting and responding to **pre-action** correspondence.

Rules on Pre-Action Letters

It is standard practice in **Spain** to send a **pre-action letter** to the potential defendant. However, in most cases no specific rule obliges the claimant to do so.

In limited cases, a **pre-action letter** must be used where there is a requirement to make a demand for payment prior to bringing a court action, for example:

- Proceedings to obtain a summary court judgment for a breach of a finance lease.
- Certain agreements related to movable property registered at the Movable Property Hire Purchase Registry.

Disputes Suitable for Pre-Action Letters

Pre-action letters can be used for most types of disputes and generally any situation where the fulfilment of a legal or contractual obligation or payment of a debt is being requested by the claimant.

Disputes Not Suitable for Pre-Action Letters

Generally, there are only very limited cases in which **pre-action letters** would not be suitable. This might be the cases where, for example:

- It would be convenient not to send a **pre-action letter** (such as where legal action must be brought urgently).
- Where it is clear that no satisfactory response would be obtained from the recipient.

Pre-Action Procedures for Different Types of Disputes

There are no formal pre-established procedures to be followed for different types of disputes.

Who Can Send a Pre-Action Letter?

Pre-action letters are usually issued by the parties themselves, even if they are assisted by lawyers. This is to avoid confidentiality-privilege issues (see *Practical Tips*) if the **letter** is later submitted to a court or disclosed to a party other than the lawyers themselves. However, it is not uncommon for the **letter** to be signed by lawyers representing the parties. In those cases, to avoid confidentiality-privilege issues, it is advisable that the confidentiality-privilege rule is expressly excluded and disclosure and submission to the court expressly reserved and allowed in the **letter**.

Contents of Pre-Action Letter

No specific documents or details are required in a **pre-action letter**. A **pre-action letter** commonly includes:

- Identification details of the parties.
- A description of the dispute.
- The payment or actions required from the recipient to solve the dispute and avoid judicial proceedings.
- The time limit for the recipient to comply with the request or answer the **letter**.

If the **letter** aims to interrupt a limitation period (see *Suspension of Limitation Period*), the payment or actions required in the **letter** must be clear and consistent, so that there is no doubt that further court action will benefit from an effective interruption of the limitation period.

The Response to a Pre-Action Letter

No specific details are required in a reply to a **pre-action letter**. The contents of the reply depend on the circumstances of the case and the position of the recipient.

Standard Forms

No standard forms apply.

Time Limit for Response

There is no general time limit for responding to a **pre-action letter**. The party sending the **letter** usually sets out a time limit in which to respond or solve the dispute before the sender files a court claim.

Failure to Respond

Courts may interpret a reply or lack of it in different ways, depending on the circumstances of the dispute. Generally, no negative consequences will arise for the recipient where there is a failure to respond to a **pre-action letter**. A lack of response could, however, eventually lead the court to conclude that the recipient has accepted the sender's statements in the **letter**, although this will normally only occur if it is consistent with the rest of the elements and evidence in the case.

Suspension of Limitation Period

An out-of-court claim (including a **pre-action letter**) issued by a claimant can interrupt the limitation period for civil proceedings from running (*Article 1973, Civil Code (Código Civil)*).

However, if the limitation period is interrupted and the civil action is not subsequently brought, the term of the statute of limitation restarts. To interrupt a limitation period, jurisprudence deems it necessary for:

- The payment or fulfilment request to be included in the **pre-action letter**.
- The notice to be either effectively received, or the recipient to have had the chance to become aware of it.

It is important to distinguish between the statute of limitation (*prescripción*) and the expiration (*caducidad*), which are separate concepts in Spanish law. While the statute of limitation can be interrupted by an out-of-court notice (including a **pre-action letter**), the only way to avoid the lapse of an expiration period is to file the appropriate legal action before a competent court.

Whether a particular type of action is subject to the statute of limitation or expiration is set out in the relevant legislation (or, if this is unclear, the jurisprudence applicable to such legislation), for example:

- Most personal and contractual actions are subject to a general statute of limitation period of five years (*Article 1964, Civil Code*).
- Actions based on non-contractual liability (torts) are subject to a one-year statute of limitation period (*Article 1968, Civil Code*).
- Actions to challenge the corporate agreements of a company are subject to a one-year expiration period (*Article 205, Spanish Corporation Act (Ley de Sociedades Anónimas)*).
- Actions to enforce a judgment, a decision of the court approving a judicial transaction or an agreement reached in the process, or agreements reached in arbitration or mediation are subject to a five-year expiration period (*Article 518, Spanish Civil Procedural Act (Ley de Enjuiciamiento Civil)*).

Effectiveness of a **Pre-Action Letter**

The effectiveness of a **pre-action letter** in avoiding the need for legal proceedings or narrowing the scope of proceedings will depend on the specific case and the willingness of the parties to settle the dispute. For example, **pre-action letters** are typically effective in avoiding the need for legal proceedings in pure monetary claims

matters. The Spanish Civil Procedural Act and related laws do not require the sending of a **pre-action letter** (see [Rules on Pre-Action Letters](#)), so if one is sent, the sender's willingness to settle the dispute may be inferred.

Practical Tips

In **Spain**, any communications between lawyers or in which a lawyer is involved are protected by professional confidentiality-privilege rules. According to **Spain's** Deontological Code of the Legal Profession (*Código Deontológico de la Abogacía*), lawyers cannot disclose or submit to the courts any **letters**, communications or notes received by the other party unless expressly authorised. Therefore, it is advisable for any correspondence that is intended to be further disclosed or submitted to a court to be carried out directly between the parties (not through their lawyers) or, if sent by lawyers, to ensure that the confidentiality-privilege rules are expressly excluded.

Standard Clauses in a **Pre-Action Letter**

The clauses in *Standard Document, Letter Before Action: Cross-border* are commonly seen in a **pre-action letter** in **Spain**, with the following exceptions:

- *Clause 3 (Relevant Documents)* would be unusual in **Spain**, as pre-trial discovery is used in the jurisdiction.
- *Clause 5 (Funding Arrangements)* would be unusual, as these kinds of arrangement are not commonly used for disputes in **Spain**.

For details of the rules and contents related to confidentiality and privilege, see [Who Can Send a **Pre-Action Letter**?](#)

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