

Pre-Action Letters in Hong Kong: 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 Hong Kong.

This Practice 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 Practice Note is a quick guide to the practice of notifying the prospective defendant before an action commences in Hong Kong 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

In Hong Kong, there are no specific rules imposed on the parties in relation to pre-action conduct.

Notwithstanding the foregoing, pre-action conduct can have implications as to costs (*Order 62, rules 1(e) and 2(d), Rules of the High Court (RHC)*). The Civil Justice Reforms (introduced in 2009) granted the Court of First Instance of the High Court (CFI) the power to consider the parties' pre-action conduct when assessing costs. If the CFI considers a party to have acted unreasonably, it may order that party to pay the other party's costs on an indemnity basis.

It is therefore good practice to advise clients that sending a pre-action letter is a sensible step before commencing proceedings.

The only area where there is a prescribed pre-action protocol is personal injury claims (see [Pre-Action Procedures for Different Types of Disputes](#)).

Disputes Suitable for Pre-Action Letters

All types of disputes are suitable for pre-action letters.

Disputes Not Suitable for Pre-Action Letters

There may be certain commercial situations where pre-action letters are not recommended, such as where there is a fear that a potential defendant may dissipate assets ahead of action.

Pre-Action Procedures for Different Types of Disputes

There is a prescribed pre-action protocol for personal injury claims. Practice Direction 18.1 (Personal Injuries List) sets out the required pre-action steps before starting personal injury proceedings.

Who Can Send a Pre-Action Letter?

Anyone (including the litigant) may send a pre-action letter, including but not limited to in-house lawyers or lawyers on behalf of their client.

Contents of Pre-Action Letter

There are no specific requirements for the content of a pre-action letter. However, it is advisable to include as much detail as possible of the circumstances giving rise to the dispute.

The Response to a Pre-Action Letter

All disputed facts or law (as applicable) should be clearly set out in any reply to a pre-action letter. In particular, if the pre-action letter relates to a debt and it is disputed, full details should be included in any reply.

Standard Forms

There are no standard form responses to pre-action letters.

Time Limit for Response

There are no specific time limits for responding to a pre-action letter; it will entirely depend on the circumstances of each case. For example, for a simple debt claim seven days would be too short a period, while 28 days would be substantial.

Failure to Respond

There are no specified negative implications for a defendant who does not respond to a pre-action letter.

Suspension of Limitation Period

Limitation periods for most causes of action are set out in the Limitation Ordinance (Cap. 347) and generally start running from the time when a cause of action accrues (for example, breach of contract or negligence). Pre-action communications do not have an effect on limitation periods.

To protect its position where the expiry of a limitation period is imminent, the claimant should issue a protective writ of summons with a claim generally endorsed on it, to ensure that the claim falls within the limitation period.

This type of writ only provides the minimum necessary details of a claim. The purpose of this step is to preserve the right to initiate an action that would otherwise be time-barred.

Effectiveness of a Pre-Action Letter

It is always recommended to try and resolve a dispute at a pre-action stage, as pre-action letters can be effective in avoiding the need for legal proceedings, which can be costly.

Practical Tips

When engaging in pre-action correspondence, it is important to be aware of the other party's circumstances. For example, an immediate remedy (for example, making an injunction application) may be more appropriate if it is feared that the other party may dissipate their assets.

For disputes over debts, it is also important to consider whether a debtor is worth pursuing. If not, it may be better to focus on pre-action correspondence with a view to achieving a settlement to avoid costly proceedings that may not ultimately be enforceable.

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