

# Letter before action Q&A: China

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China specific information on all the key issues to consider before issuing or responding to a pre-action letter.

This Q&A provides country-specific commentary on *Practice note, Letter before action (Pre-action or demand letter): Cross-border*, and forms part of *Cross-border dispute resolution*.

Please note that reference to pre-action letters (also known as letter of demand/demand letter) includes any correspondence from a potential claimant or a potential claimant's lawyer before initiating legal proceedings.

## Rules on pre-action letters

1. Is it standard practice in your jurisdiction for a potential claimant to send a pre-action letter to the potential respondent specifying the details of the claim? Are there any statutory rules which require a letter/notice to be sent before legal proceedings can be initiated?

A pre-action letter is not mandatory. Potential claimants may choose to engage an attorney to send a warning or demand a letter before action to urge the other party to perform its obligations or to cease infringement. However, potential claimants can initiate legal proceedings without a pre-action letter.

## Types of disputes

2. What types of disputes are considered suitable for sending a pre-action letter? Are there any circumstances in which parties in your jurisdiction are permitted to refrain from sending a pre-action letter? Are there different forms of pre-action procedures that apply in different cases such as construction or professional negligence?

### **Disputes suitable for pre-action letters**

Pre-action letters are suitable for all kinds of civil and commercial dispute.

### **Disputes not suitable for pre-action letters**

Pre-action letters are not suitable for administrative disputes and criminal matters.

### **Pre-action procedures for different types of disputes**

There are no different pre-action procedures for different types of dispute. Generally, the potential claimant should engage an attorney, who will then draft the letter according to the client's requirements and serve it on the potential respondent.

Whether or not the potential respondent replies to the letter, the potential claimant can initial legal proceedings to protect its rights and interests.

## **Pre-action letter sent by lawyer or potential claimant**

3. Who can send a pre-action letter?

Legally speaking, there is no difference between letters sent by attorneys, potential claimants themselves or in-house lawyers. But usually, the potential claimant prefers to engage an attorney to issue a pre-action letter on its behalf, because the respondent may take a letter sent by attorneys more seriously than a letter sent by the claimant or an in-house lawyer.

## **Contents of pre-action letter**

4. What details/supporting documents should be included in a pre-action letter?

No specific details or supporting documents need to be included in a pre-action letter. The drafter of the letter can decide which details or supporting documents should be included.

## **Time-limit for response to pre-action letter**

5. Is there a time-limit for sending a response to a pre-action letter?

There is no statutory time-limit for sending a response to a pre-action letter. The potential claimant usually specifies a period for the potential respondent to respond to its requests.

## Response to a pre-action letter

6. What details should be included in the reply to a pre-action letter? Are there any negative implications for the potential respondent(s)/recipient(s) if they choose not to respond to the pre-action letter? Are there standard forms of response in specific cases?

### Details to be included

No particular details are required to be included in the reply to a pre-action letter.

### Negative implications

Responding to pre-action letters is not a statutory duty, so there are no negative implications if the potential respondent chooses not to respond. In practice, most potential respondents choose to reject or ignore a pre-action letter rather than reply to it.

### Standard forms

There is no standard form of response. The potential respondent can choose the form of a response at its discretion.

## Limitation period

7. Does the pre-action letter interrupt the running of the limitation period for initiating civil proceedings? If not, what steps can the potential claimant take to protect its position on account of the imminent expiry of the limitation period? Can the potential claimant start legal proceedings and then get them temporarily suspended while they comply with the pre-action rules or obligations (if any)?

Serving a pre-action letter can interrupt the running of the limitation period for initiating civil proceedings. The prescribed period for litigation will be suspended and recalculated when the potential claimant requires the potential respondent to perform their obligations (*Article 195, Civil Law of the PRC*), which is the function of the pre-action letter.

The claimant can start legal proceedings and then withdraw them if the respondent complies with the pre-action rules.

## Effectiveness of a pre-action letter

8. Are pre-action letters considered effective in avoiding the need for legal proceedings?

Pre-action letters are considered ineffective in avoiding the need for legal proceedings, given that they are not mandatory. Potential respondents rarely perform their obligations or reach settlements with the potential claimant as requested by pre-action letters.

In practice, most pre-action letters serve as evidence to prove that cases were filed within the prescribed time period.

## Practical tips

9. Are there any practical tips that should be kept in mind while issuing or responding to a pre-action letter in your jurisdiction?

When issuing a pre-action letter, the attorney should:

- Describe the facts of the case clearly by referring to evidence provided by their client.
- Argue that their client's claims are well-founded by referring to relevant facts, laws and regulations.
- State the negative implications of a failure to meet their client's claims.
- Provide a reasonable period for the potential respondent to respond to the letter (if the attorney wants to get a reply).
- Serve the pre-action letter in multiple ways.

Although responses are expected, potential respondents rarely reply to pre-action letters. If a potential respondent wants to respond to a pre-action letter, they should:

- Respond within the period specified in the letter.
- Rebut facts stated in the letter that are not in line with reality, using evidence.
- Do not admit any facts detrimental to the potential respondent.
- Point out the potential claimant's wrongdoings (if any).
- Try to reach a settlement with the potential claimant, to avoid legal proceedings.

10. Are there any clauses that that would be usual to see in a letter before action or and/or that are standard practice in your jurisdiction which do not appear in the *Standard document, Letter before action: Cross-border*? Are there are any clauses included which you would not normally see, and if so for what reason (for example, is it because they are not enforceable)?

*Standard document, Letter before action: Cross-border* includes all the usual clauses of a Chinese pre-action letter.

Three clauses are not commonly found in a Chinese pre-action letter:

- *Standard document, Letter before action: Cross-border: clause 3: part B* is uncommon, because it is unlikely that the potential respondent will disclose the relevant evidence.
- *Standard document, Letter before action: Cross-border: clause 7* is not usually included, because instructing experts is costly and generally unnecessary.
- *Standard document, Letter before action: Cross-border: clause 8* is unenforceable in a pre-action letter. If the potential claimant wants a reply from the respondent, they can include such a clause in the letter. But in most cases, the potential respondent will choose not to reply.

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