

Pre-Action Letters: Overview (Japan)

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Practice note: overview | Law stated as at 01-Jun-2026 | Asia, Japan

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

This Practice Note explains that while not generally mandatory, sending a warning or demand letter before initiating legal proceedings is common practice to resolve disputes amicably, avoid unnecessary legal costs, and gather information. This Practice Note outlines the effectiveness of pre-action letters in avoiding litigation and discusses the statutory pre-action procedures required for certain types of disputes. It also details the specific rules for sending an advance notice and making an inquiry under the Japanese Code of Civil Procedure (CCP). Key considerations covered include the impact on the statute of limitations, the lack of "without prejudice" privilege for settlement communications, and who can issue a letter. This Practice Note provides practical drafting tips for both the potential claimant and respondent, addressing the contents of the letter, time limits for response, and the consequences of failing to reply.

When instructing local counsel or dealing with a dispute with an international element or regulatory perspective, a legal practitioner needs to know about the pre-action requirements, including the rules and legal practice in relation to pre-action letters. In most jurisdictions, it is not mandatory to send or respond to a pre-action letter for many types of action. In these cases, parties can commence proceedings without making an offer of compromise or taking any other step.

Regardless of any 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 usually the case unless the situation demands otherwise (see [Disputes Not Suitable for Pre-Action Letters](#)).

This Note provides an overview of the rules in relation to 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. It explains the practice of notifying the prospective defendant before an action commences in Japan 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

Although it is not mandatory to send a pre-action letter before initiating legal proceedings under Japanese laws, it is fairly common practice to do so for the following reasons:

- A demand may be required by law to cause a specific legal effect, such as to interrupt the statute of limitations or as a condition to terminate a contract. It is common to make these demands in the form of a pre-action letter as evidence of the demand.

- A potential claimant may wish to use a pre-action letter to settle a dispute amicably without going to court, to avoid any negative impact to the business relationship caused by filing an action, and to avoid any unnecessary legal costs for filing and disputing a lawsuit.
- A potential claimant may use a pre-action letter as a tool for collecting information or evidence from the potential respondent's response or reaction.

Disputes Suitable for Pre-Action Letters

Almost all disputes are suitable for pre-action letters as they can help avoid any negative impact to the business relationship, as well unnecessary legal costs incurred in filing a claim with the court (see [Rules on Pre-Action Letters](#)).

Disputes Not Suitable for Pre-Action Letters

See [Disputes Suitable for Pre-Action Letters](#).

Pre-Action Procedures for Different Types of Disputes

Certain types of disputes have statutory pre-action procedures, for example:

- A conciliation process must take place before filing an action regarding family affairs or an action to demand an increase or decrease in rent of leased land or buildings.
- An administrative review of an administrative disposition must take place before filing an action for the revocation of the administrative disposition, if legislation requires.
- A holder of a utility model right or an exclusive licensee may not exercise that right or exclusive licence against an infringer, for example, unless they have given warning to the Report of Utility Model Technical Opinion regarding the registered utility model.

Who Can Send a Pre-Action Letter?

It is common practice at the early stages of a dispute for the potential claimant to send a pre-action letter themselves. The concern is that a letter from a lawyer, whether in-house or external, may prematurely accelerate the dispute to litigation rather than lead to an amicable settlement. If the potential claimant's letter fails to obtain an amicable solution, external lawyers will generally issue pre-action letters on the potential claimant's behalf.

Contents of Pre-Action Letter

General Rules

There are no legal or practical rules on the details or the supporting documents for a pre-action letter.

However, a pre-action letter may include the following information:

- Identity of the parties involved.
- What the potential claimant is demanding, including the nature of the claim, the specific action or inaction the claimant is expecting from the respondent and the amount of the claim.
- Sufficient factual and legal basis of the claim for the potential respondent to decide whether to settle the claim, including rebuttal to allegations the potential respondent is likely to make.

The pre-action letter need not include supporting documents unless the potential respondent is unlikely to be aware of those documents.

Advance Notice and Inquiry Prior to the Filing of an Action Under the Code of Civil Procedure

Aside from a general pre-action letter, under the Code of Civil Procedure (CCP), the party intending to file an action may send an advance notice in writing to the potential defendant in the action of the filing of an action. The party providing the advance notice may, within four months after providing the advance notice and before filing the action with the court, make an inquiry to elicit particulars necessary for preparing allegations or proof if the action is filed to the recipient of the advance notice (Articles 132-2 and 163, CCP). They may also seek certain dispositions from a court for the collection of evidence before filing an action that will be necessary once the action is filed.

A pre-action letter as an advance notice must contain the following information:

- Names and addresses of the parties and names and addresses of their agents. (The person giving the advance notice or their agent must affix their name and seal to the document.)
- Date of the advance notice.
- Statement that the letter is sent as an advance notice (Article 132-2, paragraph 1, CCP).
- The summary of the claim and the specifics of the main issues in dispute.
- When the potential claimant plans to file an action.

A pre-action letter as an inquiry must contain the following information:

- Names of the parties and their agents.
- Address, post code and facsimile number of the person making the inquiry.
- Name and seal of the person who prepared the inquiry.

- Indication of the advance notice on which the inquiry is based.
- Date of the inquiry.
- Matters subject to the inquiry and justification for the inquiry.
- Statement that the inquiry is made under the Article 132-2, paragraph 1 of the CCP.
- Deadline to respond to the inquiry.

Response to a Pre-Action Letter

There are no specific details that a potential respondent must include in a reply to a pre-action letter under Japanese law.

However, the reply should include the following information to rebut the potential claimant's arguments and to justify the potential respondent's legal position:

- Whether and how the potential respondent will comply with the demands set out in the pre-action letter.
- Specific rebuttals against any material allegations in the pre-action letter.
- Any counterclaim or counterargument for the factual and legal basis.

A response to an advance notice under the CCP must include the following information:

- Names and addresses of the parties and their agents. (The person responding to the advance notice or their agent must affix their name and seal.)
- Date of the written response.
- Statement that the letter is sent as a response under Article 132-3, Paragraph 1 of the CCP.
- A summary response to the claim and the main issues of the dispute, which must be described specifically.

A response to an inquiry under the CCP must include the following information:

- Name of the person making the inquiry, the person receiving the inquiry and their agents.
- Name and seal of the person who prepared the written response.

- Indication of the advance notice on which the inquiry is based.
- The date of the response.
- Response to the matters that are inquired into.
- Reason for refusing to respond to the matters subject to the inquiry (if any).

Standard Forms

There are no standard forms of reply to a pre-action letter. The specific responses to the allegations in the pre-action letter are likely to be fact-sensitive and vary from case to case.

It is common to send a content-certified letter with proof of delivery to demonstrate that the other party received the letter.

Time Limit for Response

There is no legal fixed time limit to respond to a pre-action letter in general.

A potential respondent who received an advance notice under Article 132-2, paragraph 1 of the CCP and responded to it may, within four months from the date of the advance notice, make an inquiry or seek certain dispositions from a court to commission (summon) the holder of a document or information to be used as evidence before the potential claimant files the action with the court.

An inquiry made under Article 132-2, paragraph 1 of the CCP contains a deadline to respond, which is to be set by the sender and needs to be reasonable, but there is no penalty under the CCP for failure to respond to an inquiry by that deadline. Nevertheless, during the fact-finding stage, the court may draw adverse inferences where the recipient of an inquiry failed to respond without a valid reason.

Failure to Respond

If there is no express reservation of rights and no justifiable reason for not responding to the material allegations in the pre-action letter, the potential claimant may subsequently rely on this failure as evidence that the respondent does not dispute the allegations. If the potential respondent does respond to the allegations at a later stage, the respondent's belated response may be less credible.

A potential respondent who received an advance notice under Article 132-2, paragraph 1 of the CCP may not make an inquiry or seek certain dispositions to commission (summon) the holder of a document or information from the court for collection of evidence if the potential claimant files the action, unless it responds to the advance notice.

Suspension of Limitation Period

The pre-action letter postpones expiration of the limitation period for bringing civil proceedings for six months from the date of the pre-action letter. After the six months period has passed, the limitation period will expire. The expiration of the limitation period continues to be postponed if the potential claimant brings an action within six months from the date of the pre-action letter, for the duration of the legal proceedings.

A potential claimant may also postpone the expiration of the limitation period by filing a petition for conciliation, where the parties engage in settlement discussions before the court.

Effectiveness of a Pre-Action Letter

Pre-action letters are considered effective in avoiding the need for legal proceedings where:

- The claim is not, or may not be, disputed between the parties.
- The potential respondent is likely willing to comply with the matters demanded in the pre-action letter.

If the potential respondent does not comply with the demand in the pre-action letter, the potential claimant will need to bring legal proceedings against the potential respondent to pursue the claim further.

Practical Tips

Both the pre-action letter and any response should adopt a polite but firm tone without any abusive or provocative language. An unnecessarily hostile letter may have a negative impact on the sender's reputation and may harm the sender's business relationships.

Further, a pre-action letter and any response may be produced to the court as written evidence of the parties' negotiations before legal proceedings are filed. If the letter comes across as unprofessional and hostile, the court may form a negative impression of the party who issued that letter.

Standard Clauses in a Pre-Action Letter

Under Japanese law, unlike in common law jurisdictions, there is no privilege attached to communication during settlement negotiations. Accordingly, a letter is not typically marked "without prejudice." However, it is common to state that any proposal contained in a pre-action letter is made only for the purpose of the settlement negotiation without admitting liability.

Although the sample letter before action may enclose the document relevant to the debt, the pre-action letter need not include supporting documents unless the potential respondent is unlikely to be aware of the documents and the provision of the supporting documents can help the potential claimant to convince the respondent to settle.

It is unusual to disclose funding arrangements in the letter before action, although there is generally no harm to the claimant in disclosing this information.

In Japan, the letter before action would seek a substantive response by a specified deadline. However, it is not common to seek a separate acknowledgment of the letter before action. Even if the respondent does not acknowledge the letter before action, the claimant will still expect to receive a substantive response by the specified deadline.

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