

# Letter before action Q&A: Dubai International Finance Centre (DIFC)

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Dubai International Finance Centre (DIFC) 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*.

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.

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## 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?

It is standard practice to send a pre-action letter before issuing a claim. This is not mandatory, and there are no rules, legal provisions or pre-action protocols which require the sending of a pre-action letter before issuing a claim.

However, sending a pre-action letter may be of benefit in relation to costs, since when considering costs, the Dubai International Financial Centre (DIFC) courts must have regard to all the circumstances, including the parties' conduct (*Rule 38.8, Rules of the DIFC Courts (RDC)*). The parties' conduct includes conduct before, as well as during, the proceedings (*RDC 38.9*).

## 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**

Generally, all disputes would warrant the sending of pre-action letters, since pre-action letters could assist parties in resolving the dispute without resorting to court action.

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

It may not be strategically beneficial to send a pre-action letter for certain applications for without notice orders, such as injunctions or freezing orders, among other things.

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

No such procedures exist.

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

3. Who can send a pre-action letter?

A pre-action letter may be sent by an in-house lawyer or the party itself. However, if external lawyers are retained, the pre-action letters should ideally be sent by recognised DIFC court practitioners, as only DIFC court practitioners are authorised to conduct proceedings in the DIFC.

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

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

There are no mandatory requirements, but it is usual to include:

- A brief statement as to the basis of the claim. Generally, this would include the basis of any obligations (for example, under contract or tort) owed to the claimant, how such obligations have been breached, and the consequent entitlement to a claim against the defendant. Supporting documents are generally not included at this stage.
- The claim value.
- The time within which a response is expected.

## Time limit for response to pre-action letter

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

There are no definite time limits. It is general practice to respond by the time specified in the pre-action letter itself (see [Question 4](#)), or to ask for further time to respond.

## 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

It is customary to include a denial of the matters set out in the pre-action letter and to explain the basis of the denial. It is also typical to warn the other party of costs implications if that party chooses to proceed with the action.

### Negative implications

Not replying may be negatively construed in any determination by the court as to costs (see [Question 1](#)). A party initiating action may also plead in its claim that the non-response is evidence that the defendant has no defence to its claims and/or that the claimant has no other option but to initiate action in court. Non-response to a pre-action letter which gives notice of interim injunctions could be used by a claimant to its benefit by arguing that the defendant has simply refused to engage and that it has no option but to seek interim injunctions

## Standard forms

There are no standard forms.

## 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)?

Sending a pre-action letter would not interrupt limitation periods. It is advisable to, at least, issue a claim form in the DIFC courts before any limitation period expires.

Issuing a claim form is the first step to initiate action. However, the claim form may be accompanied by a Particulars of Claim if required (although it is not necessary to do so if the intent is only to interrupt limitation periods). A pre-action letter may be used to invite the defendant to agree to the limitation periods being suspended or to accept the breach of obligations detailed in the letter before action. Limitation periods would be suspended from the date of such agreement or acceptance. Once a claim form has been filed, a party may request that the proceedings be suspended if there are reasons for such suspension (these could include the claimant's right to preserve its position pending further action). The decision on such a request would be at the discretion of the court, based on the facts and circumstances of each case.

## Effectiveness of a pre-action letter

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

In our experience, pre-action letters have, in some cases, been effective in disposing with the need for a court hearing, or in shortening a court hearing. They have also been effective in avoiding court proceedings altogether in certain cases. For example, in a complex spring-board injunction application, the pre-action letter attaching a draft order requested by the claimant can enable parties to agree on most aspects of the order, leaving only a few issues to be determined by the court.

## 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?

The contents of a pre-action letter will depend on the nature of the dispute; if the claimant has a strong case, it may be ideal to set out its full case and request that the defendant agree to its demands.

The contents of the response will also depend on the nature of the dispute. If an unequivocally strong defence exists, it is advisable to specify the details of the defence in the response.

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

### **“Without prejudice”**

If the claimant intends to rely on the contents of the letter, the letter should not say that it is sent “without prejudice”. If the claimant only intends to rely on the letter in relation to costs, it should state that it is sent “without prejudice save as to costs”.

### **Discovery process (paragraph 3(B))**

This is not a typical clause. There is no obligation to disclose any documents that a claimant demands. Any required disclosure should be by way of a request for disclosure during court proceedings or by a court order.

### **Funding arrangements (paragraph 5)**

It is not necessary to disclose these arrangements in pre-action letters; any funding arrangements should be disclosed when submitting the claim form (*Practice Direction No. 2 of 2017 on Third Party Funding in the DIFC Courts*).

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