

# Pre-Action Letters: Overview (Italy)

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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 Italy.

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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 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 Italy 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

Under Italian law, pre-action letters take the form of a formal notice (*lettera di messa in mora*). Article 1219 of the Civil Code, defines this as a written notice sent by a creditor to a debtor to formally sanction a breach of contract and to order the debtor to comply with their obligations. In Italy, it is not mandatory to send a pre-action letter before taking legal action.

However, the sending of a formal notice is generally a prerequisite to put the debtor in default (*mora ex persona*) and to benefit from the following advantages:

- Once the debtor has received a notice of default, they will be in default even if the debtor's performance has become impossible for reasons beyond their control (*perpetuatio obligationis*). The debtor can only be released from their obligations if they prove that the object of the contract would have perished even if it had been in the creditor's possession (Article 1221, paragraph 2, Civil Code). When monetary obligations are involved, and there is no agreed deadline for the obligation to be met, or where, even if a deadline has been set, the parties have agreed that the obligation must be met at the debtor's domicile (*querable*), statutory interests start accruing from the day the debtor's delayed payment is formally sanctioned by a pre-action letter, in other words, from the day the pre-action letter is received by the debtor, even if the agreement does not provide for interest and the creditor does not provide evidence of any damage suffered (Article 1224, Civil Code). However, in the event of late payment in commercial transactions, the creditor is automatically entitled to default interests from the day following the expiry of the payment deadline, without the need for any formal notice of default (Articles 4 and 5 of Legislative Decree No. 231 of 2002 and Cass. 31<sup>st</sup> May 2019, no. 14911).

- Sending the letter will interrupt the limitation period for bringing a claim (Article 2943, Civil Code) (see [Suspension of Limitation Period](#)).

In some cases, however, default occurs automatically as soon as the debtor fails to meet their contractual obligation (*mora ex re*), without the need to send a pre-action letter. In particular, a letter is not necessary when:

- The debt arises from a tort (Article 1219, Civil Code). Since a considerable period normally elapses between the occurrence of the tort and the payment of damages, the party in breach is deemed to be in default from the time the tort occurred.
- The debtor has stated in writing that they do not intend to meet their obligation (Article 1219, Civil Code).
- The contractual deadline has expired, and the obligation is of a kind that must be met at the creditor's domicile. Obligations to be met at the creditor's domicile (*portable*) are typically monetary obligations under Article 1182 of the Civil Code, excluding those (see above) with no fixed deadline, or where there is a deadline but the parties have agreed that the obligation must be met at the debtor's domicile (*querable*).
- The rule does not apply if the deadline falls after the death of the debtor. Under Article 1219 (2) of the Civil Code, the debtor's heirs will be in default eight days after receipt of a pre-action letter requesting payment.
- A contractor fails to make a payment to deadline to a sub-contractor (Article 3 paragraph 3 of Law 192 of 18 June 1998).
- The obligation arises from a commercial transaction (Articles 4 and 5, Legislative Decree No. 231 of 2002).

Liquidity of the claim is not a prerequisite for the debtor's default (Court of Cassation 30 April 2014, n. 9510). In other words, there may be a default even when the debt has not yet been liquidated.

A similar tool for triggering a debtor to comply with their obligations is the notice of performance. However, with the notice of performance the claimant requires the other party to perform usually within a period of 15 days of receipt of the notice, at the expiry of which the contract is automatically terminated without the need to request a court judgment.

## Disputes Suitable for Pre-Action Letters

In general, pre-action letters are used in contractual disputes, where the creditor requires the debtor to pay a debt or meet an obligation, and the letter is perceived by the potential defendant as a warning that legal proceedings might commence.

Technically, pre-action letters are suitable for any dispute, and it is common practice to use them, although it is not mandatory to do so to start legal action.

## Disputes Not Suitable for Pre-Action Letters

As mentioned above, pre-action letters are not mandatory in Italy.

In addition, in certain situations the law expressly provides that it is not necessary to send a letter of formal notice (see [Rules on Pre-Action Letters](#)).

## Pre-Action Procedures for Different Types of Disputes

There are no specific pre-action rules and procedures for different types of case. The only requirement under Italian law is that the letter must be in writing (Article 1219, Civil Code).

## Who Can Send a Pre-Action Letter?

Both the creditor and their lawyer can send a pre-action letter. In practice, the lawyer will usually send the letter, to emphasise the threat of legal proceedings if the debtor does not comply with their contractual obligations.

It should be noted that the power of attorney authorising the lawyer to send the pre-action letter does not need to be in writing, contrary to the general rules governing contracts. The granting of such power can be inferred from the fact of the lawyer's acting on behalf of the client.

## Contents of Pre-Action Letter

Italian law does not provide for any specific requirements with regard to the content of a pre-action letter, although the letter must be in writing (see *Pre-Action Procedures for Different Types of Disputes*).

As pre-action letters are designed to address different contractual obligations, the specific content of the letter will vary depending on the type of obligation the debtor should have fulfilled.

## The Response to a Pre-Action Letter

There are no legal requirements to include any specific information in the response to a pre-action letter.

Generally, the response will list the reasons why the debtor has not met or does not intend to meet their obligations, such as, for example, a challenge to the existence of the debt or the amount of the claim.

## Standard Forms

There is no standard form of response to a pre-action letter.

## Time Limit for Response

Italian law does not provide for a general time limit for responding to a pre-action letter. Therefore, the claimant usually includes a deadline after which proceedings will be commenced.

## Failure to Respond

Under Italian law, there is normally no negative implication if the recipient chooses not to reply to a pre-action letter. Silence will not be construed as an acceptance of the claims listed in the letter.

However, it is recommended a reply to the letter is sent to challenge the existence or extent of the debt.

## Suspension of Limitation Period

Under Article 2943 of the Civil Code, any formal notice of default will interrupt the limitation period.

However, according to case law, to interrupt the limitation period, the letter must include the following details:

- The parties and the date the agreement was signed.
- The amount of the claim.
- The deadline within which the debtor must meet their obligation. The deadline must be a precise date, for example, 15 days from the date of the pre-action letter.

(Cass. 4th July 2017, no. 16465.)

## Effectiveness of a Pre-Action Letter

A pre-action letter can be seen as a good tool to avoid litigation, as it allows the parties to discuss their different positions before the start of legal proceedings. In some cases, the parties succeed in reaching agreement.

However, if the parties fail to reach an agreement, the plaintiff can submit the letter to the court as evidence they have tried to settle the dispute amicably, which may be favourably viewed by the court.

## Practical Tips

Although it is open to the parties to draft or reply to a pre-action letter themselves, it is recommended that they instruct a lawyer.

The content of the letter must be as clear as possible, stating the source and the amount of the claim, together with a clear deadline to be met for performance.

## Standard Clauses in a Pre-Action Letter

The clauses in *Standard document, Letter before action: Cross-border* can be included in a pre-action letter under Italian law.

Pre-action letters should also contain a final warning that if the debtor does not comply with their obligations within the stated deadline, the creditor may take legal action without any further notice to collect their claim, including default interests and costs.

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