

The Importance of Letters of Demand in Malaysian Civil Suits

Written by *Nurarissa Erina*

Did you know that while issuing a Letter of Demand isn't legally required before initiating a civil suit in Malaysia, it could significantly impact your case's outcome. Civil suits involving monetary claims typically begin with a Writ of Summons, particularly when dealing with unpaid debts. This is consistent with **Order 5 Rule 2 of the Rules of Court 2012**, which states that the proceedings in which a substantial dispute of fact is likely to arise shall be begun by writ.

Here's the catch: even if you win your case, the court might deny you the right to costs if you didn't first attempt to resolve the matter through a demand letter. This principle was exemplified in **Order 59 Rule 3 of the Rules of Court 2012** and in the established case of **Cromwell Property Insurance Co Ltd v Hucks [1939] 3 All ER 257**, in which the court ruled that in such a case the right to costs could be denied or reduced:-

“Where a plaintiff files an action without first demanding the sum claimed from the defendant, and the defendant tenders payment of the sum claimed in the writ after filing of the action, the plaintiff may be deprived of costs or have his costs reduced on the ground that the action is vexatious and necessary.”

Besides, there are other legal precedents that strongly support this position, as demonstrated in **Chan Choy Ling v Chua Che Teck [1995] 3 SLR(R) 310, [1995] 3 SLR 667 (CA, Sing)**, in which a successful party had his costs reduced for his unjustifiable delay and abuse of procedure (introduction of irrelevant documents). Not to mention, in the notable case of **Chew Kia Ngee v Singapore Society of Accountants [1989] 1 MLJ 331**, where the court determined that no costs should be awarded to the successful appellant, considering the exceptional nature of the circumstances that the respondent

was simply fulfilling its professional obligations and had conducted itself appropriately throughout the proceedings, without any improper or vexatious behavior against the appellant.

In other words, as laid out in **Order 59 Rule 3(2) of the Rules of Court 2012**, the court has the discretion to make an order as to the whole or any part of the costs if it appears there are '*exceptional circumstances*' that would deprive the parties of their costs. Therefore, the judiciary's stance is clear: while your writ won't be void without a demand letter, courts favor attempted pre-litigation settlements. Legal action should only follow when demand letters fail to elicit a response from the possible defendant.

Conclusion

While Letters of Demand are not a pre-requisite to filing a suit in the Malaysian legal system, they serve as a crucial strategic tool that courts strongly favor. Several cases have shown that bypassing this step could result in cost penalties, even for successful parties. Legal practitioners should therefore prioritize sending letters of demand before proceeding with litigation.

If you have more questions or need further clarification, feel free to contact us at **+03-6420 2928** and/or office@shankargovinth.com! We'll be happy to assist you.