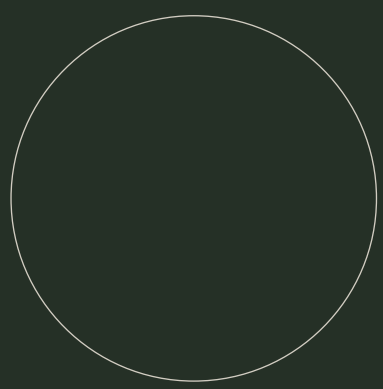


DO NOT IGNORE NOTICE OF DEMAND



WHAT IS A NOTICE OF DEMAND

Notice of demand or letter of demand is used interchangeably but it carries the same meaning. It is a demand made by the Demanding Party against the Demanded Party for a certain remedy to be done as per the Demanding Party's request.

In general, notice of demand is issued for the claim of civil nature in relation to debt, breach of contract, and other claims involving monetary value and containing the following:

1. Fact;
2. The demanded sum by the Demanding Party;
3. The timeframe to respond to the demand;
4. The onwards action in the event the Demanded Party fails to respond or adhere to the demand;

01

WHAT IS THE PRUDENT COURSE OF ACTION IF A DEMANDED PARTY IS SERVED WITH A NOTICE OF DEMAND?

02

If the Demanded Party is in the receipt of a notice of demand, the Demanded Party may consider the following course of action: -

A) In the event that the Demanded Party is agreeable to the demand;

- To respond to the Demanding Party or their solicitors for the purpose of settlement pertaining to the demand;
- To request for settlement of the demand via instalment or to provide alternative settlement;
- To respond to the Demand within the timeframe provided in the notice of demand;

B) In the event that the Demanded Party is not agreeable to the demand

- To appoint Solicitor to deny the claim(s) made by the Demanding Party;
- Alternatively, based on the facts of the case, the Demanded Party may respond towards the claims stated in the notice of demand;
- To follow up with the Demanding Party subsequent to the Demanded Party's response to the Demanding Party and/or its Solicitors. Bear in mind that there is a possibility that the Demanding Party has initiated a civil action against the Demanded Party.

KEY TAKEAWAY

ONE MAY, BUT IT WOULD NOT BE PRUDENT TO DO SO.

Although the action to respond to any notice of demand served against the Demanded Party is not mandatory in law, the proactive action in replying to the said notice may become a defence in the Demanded Party's case in the event the matter subsequently escalated to a trial in civil court.

In the case of *Small Medium Enterprise Development Bank Malaysia (formerly known as Bank Perusahaan Kecil dan Sederhana Malaysia Berhad) v Lim Woon Katt* [2016] MLJU 390, the Plaintiff alleged that the Defendant was liable under a Guarantee and Indemnity Agreement executed by the Defendant. The Defendant in this case did not respond to the Plaintiff's letter of demand and subsequently a civil suit was filed.

3 CAN THE NOTICE OF DEMAND BE IGNORED?

In the civil suit, the Defendant contended in his defence that he did not sign the Guarantee and that he believed his signature was forged. The Court of Appeal found that such failure to respond to a demand notice will weaken the probative force of any defence subsequently raised in a civil suit. The court further states that the court will take into consideration the conduct of the Plaintiff and/or the Defendant in order to determine which version of events that is more probable.

With reference to the case mentioned above, the act of ignorance towards the notice of demand served will be inferred against the Demanded Party in the event the Demanding Party proceeded to serve a writ of summon and the statement of claim on the matter.

Conclusion

In essence, notice of demand is the earliest stage in a civil action. With that, a lot of disputes can be settle outside the court of law if the Demanded Party act proactively and responded adequately towards such notice issued by the Demanding Party.