

## Settlement (civil litigation) Q&A: Italy

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Italy-specific information on all aspects of settling a dispute by negotiation, mediation and other alternative dispute resolution mechanisms, including the statutory obligations to attempt settlement, form and formalities of settlement, how to ensure confidentiality of the settlement terms, the without prejudice status of negotiations, the law on third party rights, enforcement of the settlement terms and how to set aside a settlement.

This Q&A provides country-specific commentary on [Practice note, Settlements in cross-border disputes: an overview](#).

### Statutory obligations

**1. Do courts in your jurisdiction encourage settlement between parties? If so, by what means? Are there any implications for the parties that refuse to participate in settlement negotiations?**

Italian courts sometimes encourage settlement between parties. In particular, at any stage of the proceedings up to the end of the trial, the judge can summon the parties and invite them to settle the case (*Article 185, Civil Procedure Code*).

The judge can also submit a settlement proposal to the parties (*Article 185 bis, Civil Procedure Code*). If a party refuses a judge's proposal without a good reason and, then, wins the case with a judgment which awards it an amount lower or equal to the amount set out in the judge's proposal, the judge can order that the winning party refund the losing party's legal expenses or set off those expenses between the parties (*Article 91, paragraph 1, Civil Procedure Code*). In doing this, the judge can overrule the general requirement that the losing party cover the cost of the winning party's legal expenses.

### Form of settlement

**2. What are the different ways in which parties to a dispute can record a settlement between them (for example, a settlement agreement, deed or court order)? Are settlements agreed verbally or through emails or letters exchanged between the parties required to be recorded in separate agreement or court order to be considered valid?**

A settlement can be reached in two ways:

- Through a settlement agreement entered into by the parties privately and out of court (not only while judicial proceedings are pending, but also before the beginning of judicial proceedings and with the purpose of avoiding them). If the subject matter of the settlement agreement consists of rights relating to real estate (sale and purchase, usufruct, long leases, and so on), the agreement must be in writing, otherwise it will be void. In any other cases, the settlement agreement can be oral, however it is standard legal practice to record the settlement in writing for evidential purposes. "In writing" means recorded on paper with a physical signature, or in

electronic format (\*.pdf) with a digital signature. In this regard, simple emails with the name of the sender by way of signature are not sufficient to be considered as written evidence.

- In front of the judge during judicial proceedings or in front of an authorised mediation body, in which case the contents of the settlement agreement are reported in a minute, which is public.

In both cases, the settlement is binding.

Note that, in a limited number of cases, for the settlement to be considered valid and effective, the parties must satisfy certain requirements. For instance:

- When the subject matter of a settlement involves inalienable rights of employees in the context of a labour dispute, the settlement agreement is only valid if entered into before a judge during judicial proceedings or before a "Chamber of Labour" (a public mediation body, which represents the interests of employees in Italy) (*Article 2713, Civil Code*).
- To settle a dispute between a joint stock company and its directors regarding mismanagement by the latter, the company must obtain the authorisation of its shareholders in the context of a shareholders' meeting (*Article 2393, paragraph 6, Civil Code*).

### Formalities

#### **3. What formal requirements exist for executing a valid settlement? Is it possible to use counterparts to complete the process of executing a settlement agreement?**

The formal requirements for executing a valid settlement agreement depend on how settlement is reached.

If the settlement is reached before a judge or a mediation body, the parties simply put their signature at the bottom of the minute drafted by the judge or the mediator, which includes all terms and conditions of the settlement. The minute is considered the original document, and any party enforcing the settlement agreement shall ask for a certified copy of it to commence the enforcement proceedings.

If the settlement is reached by entering into a private out of court settlement agreement, then the formal requirements are the same as any other contract entered into by two parties. In this case, the settlement agreement may be concluded:

- By exchange of correspondence. The proposing party prepares a signed letter containing its terms and conditions of settlement, and asks the other

party to accept those terms. The accepting party sends a signed letter in reply, reporting in brackets on the contents of the proposing party's letter and clarifying that all the terms and conditions of the proposed settlement are accepted in full. The parties then exchange the letters by hand (acknowledging reciprocal receipt in writing), or by registered mail, if the agreement is on paper, or by way of a "PEC" (a special form of registered email used in Italy), if the agreement is in electronic format.

- By way of a single (paper or electronic) document (physically or digitally) signed by all of the parties involved. In case of a paper document, a number of original documents are created, equal to the number of the parties involved, so that all the parties have an original settlement agreement, which can be filed with the court if enforcement is required in the future.

### Terms of settlement subject to court ratification

#### **4. Do the terms of settlement require court approval? Does the settlement agreement need to be filed with the court? If so, are (i) the fact of settlement and (ii) the settlement terms, a matter of public record?**

The fact and the terms of a settlement do not require court approval. There is no need to file the settlement agreement with the court. The terms of the agreement are not a matter of public record, unless they are recorded in a minute (see Question 2).

### Confidentiality

#### **5. Are settlements in your jurisdiction automatically confidential? If not, what steps can parties take to seek to keep the settlement confidential?**

Settlements are not automatically confidential. The only way to keep the settlement confidential is to avoid formalising it in front of the court or a mediation body. Therefore, it is advisable to enter into a private out of court settlement agreement including a confidentiality clause (and any other term deemed necessary or convenient to strengthen the effectiveness of the obligation, for example, liquidated damages if the agreement is breached).

**Standard document, Settlement agreement (civil litigation): Cross-border: clause 13** is suitable for use in Italy.

### Powers of the parties to compromise

#### 6. Are there any restrictions on parties' power to compromise their disputes? Are there rules on who may sign a settlement, especially on behalf of a company?

Settlements are treated the same as any other contractual agreement. To be valid or effective, they must be executed (or agreed on before a court or mediation body) by a natural person who has the capacity to enter into contracts, or by the legal representative or authorised signatory of a corporation (under Italian company law).

If a party to a settlement is a minor (generally, under 18 years old) or disabled, to be fully binding, the settlement must be entered into by their authorised representative (a parent or a guardian appointed by a court) on their behalf. In general, if the settlement may be construed as an act of extraordinary administration of the assets of a minor or disabled person, their authorised representative must request and obtain an additional specific authorisation by the court to proceed.

Finally, a party can grant another person the power to enter into the settlement on its behalf. In this case, it is advisable (if not compulsory) to provide the proxy holder with a written notarised power of attorney detailing the powers that have been granted to it. Note that, when a party wants a judicial dispute to be settled in front of the court by its attorney, the latter is granted a power of attorney (drafted in accordance with Article 185, paragraph 1 of the Civil Procedure Code); the original document is filed with the court.

### Timing of settlement

#### 7. Can settlement discussions be conducted at any time during litigation proceedings? Are there any advantages, in terms of costs or otherwise, to entering into settlement negotiations sooner rather than later during litigation proceedings?

Settlement discussions can be conducted at any time during litigation proceedings.

The timing for entering into settlement negotiations depends only on the strategic views of the party and its lawyer (for example, if the outcome of a case depends mainly on the trial, it may be considered a sign of weakness to approach the counterparty for a settlement before the trial has ended). Apart from this, there is no

particular advantage, in terms of costs or otherwise, to entering into settlement negotiations sooner rather than later during litigation proceedings. Having said this, settling the case at an early stage of the proceedings may allow a party to save money in terms of fees to be paid to the lawyers for continuing to pursue the litigation, but this depends also on the agreements with the lawyers.

### Without prejudice rule

#### 8. Does the 'without prejudice' rule apply to settlement negotiations in your jurisdiction? Are there any exceptions to the applicability of the rule? Can it be waived with the consent of the parties?

The "without prejudice" rule only applies to settlement negotiations conducted by attorneys who are registered with one of the national bar associations and who are therefore required to adhere to the Code of Conduct of Attorneys (*Article 48, Code of Conduct of Attorneys (Codice Deontologico Forense)*). The authors have no knowledge of anyone waiving this rule and it is therefore unclear whether the rule can be waived. However, the rule seems to address a matter of "public order", and it is a general principle of Italian law that the waiver of a rule established to protect "public order" is null and void.

Note that in-house counsel are not protected by the without prejudice rule, because they cannot be registered with any national bar association and, as a result, they cannot adhere to the Code of Conduct of Attorneys.

### Terms of settlement

#### 9. Are there any limitations on the scope of release clauses that parties may agree with respect to existing and future claims? Please cite any relevant statutory provisions and case law.

There is no limitation on the scope of release clauses. [Standard document, Settlement agreement \(civil litigation\)](#): [Cross-border: clause 5](#) is suitable for use in Italy.

### Taxes on settlements

#### 10. Are taxes (such as income tax, capital gains tax or corporation tax) payable in relation to settlements involving payment of money?

If the settlement involves the payment of money and value added tax (VAT) is not applicable, registration tax (*Imposta di Registro*) of 3% of the settlement amount is due (*Article 9, part I of the Tariff, Presidential decree No. 131 of 26 April 1986*).

If the settlement is entered into by means of a private out of court agreement and that agreement is finalised by an exchange of correspondence, registration tax is payable only if and when one of the parties enforces the settlement (*Article 1, part II of the Tariff under Presidential decree No. 131 of 26 April 1986*).

### Severability

#### 11. Are severability clauses commonly incorporated within settlement agreements to avoid the entire agreement being held void or unenforceable due to the illegality, invalidity or unenforceability of a part of the agreement?

The issue of severability is governed by statute in Italy. Indeed, Article 1419 of the Civil Code states that:

- Where a part of a contract or a single clause in a contract is null and void because of illegality, invalidity or unenforceability, the entire contract becomes null and void if it appears that the contracting parties would not have entered into the contract without that part of the contract or the clause that is null and void.
- Where a single clause is null and void, the entire contract does not become null and void when, by operation of law, mandatory rules are substituted for the void clauses.

As a result, the issue of severability is generally not addressed with a specific term in the agreement. However, if the parties want to include such a term, [Standard document, Settlement agreement \(civil litigation\): Cross-border: clause 11](#) is suitable for use in Italy.

### Third party rights

#### 12. Can third parties enforce their rights under the terms of the settlement? If so, can parties exclude the application of third party rights in the agreement?

Any contract, including settlement agreements, can include rights in favour of third parties. If a settlement agreement contains provisions in favour of a third party it can exercise rights arising from these provisions unless and until the parties that drafted the provisions revoke or modify them (*Article 1411, paragraph 2, Civil Code*).

While [Standard document, Settlement \(civil litigation\): Cross-border: clause 17](#) is suitable for use in Italy, there is no need to include it in a settlement agreement and such a clause is generally not used.

### Stay or dismissal of legal proceedings

#### 13. What are the formalities to dispose of court or litigation proceedings once the dispute has been settled?

There are two ways of disposing of litigation proceedings after a settlement has been reached:

- A party to the proceedings serves on the other party an act of waiver (*atto di rinuncia*) waiving any reciprocal claim raised in court and accepting any act of waiver by the other party. After it is served on the other party, the act of waiver must be filed with the court. Once the judge verifies that all the parties to the proceedings have filed acts of waiver, and ascertains that these acts have been correctly drafted and served, that judge declares the proceedings dismissed (*Article 306, Civil Procedure Code*).
- The parties to the proceedings fail to appear at two consecutive hearings. Once the judge verifies that all parties to the proceedings have failed to appear on two consecutive occasions, the proceedings are dismissed (*Article 309, Civil Procedure Code*).

### Breach of settlement terms

#### 14. What are the remedies available for breach of the settlement terms? Is it possible to revive the original claim, or is it necessary to bring a fresh claim for breach of the settlement agreement?

The main remedy available for breach of a settlement is compensation for damages. The innocent party can claim cancellation of the settlement agreement for breach, and revive and pursue the original claim.

However, if the parties to the settlement agreement have novated the original claim and have not made clear that a right to cancellation for breach would still be applicable, the innocent party cannot claim cancellation or revival of the original claim, but can only claim compensation for damages.

An indemnity clause as set out in [Standard document, Settlement agreement \(civil litigation\): Cross-border: clause 9](#) is not strictly necessary in Italy. When a party brings an action with respect to a released claim,

provided the settlement agreement is valid and enforceable, the judge should dismiss the claim and order the claimant to refund the defendant's legal expenses. In addition, the defendant can counter-claim compensation for damages deriving from the same claim (as the latter could be construed as being a breach of the settlement agreement).

### Enforcement proceedings

#### 15. What are the procedures to enforce a settlement contained in a:

- Settlement deed/agreement?
- Court order?

Settlements contained in court orders are immediately enforceable (*titolo esecutivo*), without the need to bring a fresh claim to seek confirmation that the settlement is valid, binding and effective (*Article 185, last paragraph, Civil Procedure Code*). As a result, enforcement proceedings can be started simply by serving an authentic copy of the court order.

However, settlements contained in deeds or agreements are not immediately enforceable and require a fresh claim to be brought to ascertain that the debtor did not perform their obligations and to obtain a judgment ordering the debtor to comply with the settlement agreement. Such a judgment is then enforceable (*titolo esecutivo*) and can be used to commence enforcement proceedings.

### Setting aside a settlement

#### 16. On what grounds can a settlement be varied or set aside? Please outline the procedure to be followed.

A settlement can be varied or set aside in the same way as any other contract, which is by way of an amendment agreement or a mutual termination agreement.

### Legal costs

#### 17. Would you expect to see a clause dealing with legal costs in the settlement agreement? Are parties free to agree on arrangements regarding payment of legal costs? What is the position if the parties do not include a separate clause dealing with legal costs?

A clause dealing with legal costs is often present in a settlement agreement, normally to explain that any party bears its own expenses related to the settlement. If the parties want to divide legal costs in a different way, a different arrangement can also be made.

**Standard document, Settlement agreement (civil litigation): Cross-border: clause 7** is suitable for use in Italy. If the settlement agreement relates to a dispute which is already pending before a court or an arbitration panel, all parties involved are jointly and severally obliged to pay the fees of all attorneys that appeared before the court in the last three years (including those defending the counterparty) (*Article 13, paragraph 8, Law No. 247 of December 31, 2012*). To avoid joint and several liability, the attorneys should sign the settlement agreement specifying that they waive their right to be paid by any party (no matter which) pursuant to the above provision.

If legal proceedings are underway and the parties do not include a clause on legal costs, when the dismissal of the proceedings is ordered (because the parties have proceeded in one of the ways described in Question 13), the judge may decide to divide the legal costs in a way that one of the parties does not agree to. In this case, if the parties cannot reach agreement on the division of costs, the division set by the judge applies.

### Settlement agreements

#### 18. Are there any other clauses that would be usual to see in a settlement agreement and/or that are standard practice in your jurisdiction which do not appear in the Standard document, Settlement agreement (civil litigation): Cross-border?

In Italy (a civil law country), contracts generally tend to be shorter than corresponding contracts in common law countries. This is because contractual agreements are also complemented by applicable statute (mainly the Civil Code and the Civil Procedure Code). There are codified laws on:

- Indemnities, **Standard document, Settlement agreement (civil litigation): Cross-border: clause 9**.
- Severability, **Standard document, Settlement agreement (civil litigation): Cross-border: clause 11**.
- Entire agreement, **Standard document, Settlement agreement (civil litigation): Cross-border: clause 12**.
- Co-operation, **Standard document, Settlement agreement (civil litigation): Cross-border: clause 16**.
- Counterparts, **Standard document, Settlement agreement (civil litigation): Cross-border: clause 18**.

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Having said this, [Standard document, Settlement agreement \(civil litigation\): Cross-border](#) is complete and would be considered enforceable in Italy.

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