

# Settlement of Civil Disputes in Russia: Overview

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A Practice Note providing an overview on the key aspects of settling a civil dispute in Russia, including statutory duties to attempt settlement, the form and formalities of settlement, how to ensure confidentiality of the settlement terms, whether negotiations are without prejudice, third-party rights, remedies for breach, enforcement of the settlement terms, and how to set aside a settlement agreement.

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Litigation is expensive and can often take a long time. Courts in many jurisdictions actively encourage settlement, and some jurisdictions require the parties to attempt settlement procedures in certain types of civil litigation. Settlements, which can be reached before or during legal proceedings, can be a cost-effective alternative to engaging in protracted and costly court action.

Settlements are usually considered a form of contract to which general contract law principles apply. However, settlements can also become part of a court order, especially when litigation is ongoing. In the context of a civil dispute between two or more parties, a settlement comes about when they reach a mutually acceptable compromise to resolve their dispute. If the settlement covers the parties' entire dispute, the dispute ends, as do any ongoing legal proceedings related to the dispute. Generally, the parties cannot start a new action relating to that dispute, unless they specifically agree that the dispute can be revived in certain circumstances. It is important for parties and practitioners to be aware of legal framework in which settlements will be negotiated, documented, and enforced and to consider the rights of third parties affected by a settlement agreement.

This Note covers Russia-specific information on all aspects of settling a dispute by negotiation, mediation, and other alternative dispute resolution mechanisms, including:

- The legal or statutory duty and obligations, if any, to attempt settlement.
- The form and formalities of settlement, including the different ways the parties can record the settlement terms.
- Whether the terms of settlement require approval from the courts.
- How to ensure confidentiality of the settlement terms.
- The application of the without-prejudice rule, that is, how parties can ensure that anything said in the settlement negotiations cannot be held against them in any subsequent litigation.
- Whether third parties have any rights under the settlement terms.
- Remedies for breach of settlement terms.
- Enforcement of the settlement terms and how to set aside a settlement.

For information on settlement in a cross-border context, see *Practice note, Settlements in Cross-Border Disputes: Overview*.

## Legal Duty and Obligations

When hearing a case, the courts must take measures to encourage settlement between parties and assist them in resolving a dispute (Article 134(1), Commercial Procedural Code (CPC); Article 147, Civil Procedural Code). This obligation applies at any stage of the proceedings, including the pre-hearing stage. The courts can adopt the following measures to encourage settlement between the parties:

- Explain to the parties that they have the right to:
  - conclude a settlement agreement; and
  - seek assistance from an intermediary, including a mediator or court conciliator.
- Explain to the parties the terms and conditions of, and procedure for, the exercise of their right to seek settlement, as well as the substance and advantages of settlement procedures, and their legal implications.

However, parties are not obliged to take measures to settle a dispute voluntarily before the commencement of court proceedings, and can refuse to participate in any negotiations with the opposing party without any adverse consequences.

The court may, however, impose sanctions on a party that applied for postponement of the court hearing in connection with the settlement procedure but then failed to participate, and so acted in bad faith. In these circumstances, the court may award all legal costs in the case to the other party if it finds that that the party in default attempted to delay the court proceedings or otherwise committed an abuse of procedural rights (Article 111(2), CPC).

## Form of Settlement

### Commercial Disputes

In disputes under the CPC, which governs the procedure for resolving commercial disputes in the Russian Federation, the parties must submit to the court a settlement agreement signed by all parties (as a single document) for the court's approval. The settlement agreement must contain:

- All the terms and conditions agreed by the parties.
- The value of the settlement
- Time limit for performance of the parties' obligations.

(Article 140(1), CPC.)

The parties must each sign and retain a counterpart of the settlement agreement. They must reserve one additional counterpart signed by all the parties that can be provided to, and retained by, the court for filing with its case files (Article 140(4), CPC).

A settlement agreement must be in writing. Settlement agreements agreed verbally or through emails or letters cannot be approved by the court and therefore will end court proceedings.

The Supreme Court recently held that, under the CPC, a settlement agreement submitted by one of the parties in the form of a facsimile copy of the document cannot be approved. It also found that if the other party then disputes the fact of having signed the settlement agreement and submitted it by facsimile copy, reasonable doubts will arise about whether there was an intention to settle the dispute (Ruling of the Supreme Court of the Russian Federation No. 300-##19-26826 (13 February 2020)).

## Civil Disputes

In disputes under the Civil Procedural Code, which governs the resolution of general civil disputes in the Russian Federation, if a settlement agreement has not been provided to the court before the hearing, the terms and conditions of the settlement agreement can be recorded in the minutes of the court hearing in accordance with the oral submissions provided by the parties. The hearing minutes must be signed by the parties to the settlement agreement (Article 173(1), Civil Procedural Code).

For consistency, the Civil Procedural Code has been supplemented by provisions regarding the form of a settlement agreement analogous to those in the CPC. The corresponding amendments entered into force on 25 October 2019 (the amendments were introduced by the Federal Law "On Amendments on Certain Legislative Acts of the Russian Federation" dated 26 July 2019 No. 197-FZ (Mediation Amendment Law)). Accordingly, a settlement agreement in civil disputes must also be concluded in writing and signed by the parties or their representatives provided they have valid authority (Article 153.9(1), Civil Procedural Code). The rules regarding counterparts also apply (Article 153.9(6), Civil Procedural Code) (see *Commercial Disputes*).

## Out-of-Court Settlement Agreements

When the settlement does not involve court proceedings, the parties can execute an out-of-court settlement agreement. The agreement may provide for:

- A debt restructuring, which involves a reduction of debt or interest and/or an extension of payment terms.
- Substitution of a new obligation for an old one (novation).
- A debt release.

An out-of-court settlement agreement is an ordinary civil law contract that cannot be used to terminate litigation. The agreement is subject to the general rules of the Civil Code on contracts. For example, an agreement can be concluded orally, except when one of the following applies:

- The agreement is between legal entities, or between legal entities and individuals.
- The agreement is between individuals and its value exceeds RUB10,000.
- The law provides otherwise.

(Article 161(1), Civil Code.)

## Formalities

### Formal Content Requirements

Under the principle of freedom of contract, parties can agree a settlement agreement on any terms and conditions that are not contrary to civil law and other regulations or breach the rights and lawful interests of other persons (Article 421, Civil Code).

A settlement agreement may contain terms and conditions relating to:

- The deferral or extension of performance of the parties' obligations.

- Assignment of receivables, assets, and money/income.
- Full or partial waiver or acknowledgement of debt.
- Payment of the parties' legal costs.

These content rules apply both to commercial and civil disputes since the entry into force of the amended Civil Procedural Code (Article 153.9(2), Civil Procedural Code and Article 140(2), CPC) (see *Form of Settlement*).

In practice, it is common for the parties to a settlement agreement to indicate which payments made under the settlement agreement relate to particular aspects of the settlement (for example, repayment of a loan, payment for goods supplied, or indemnification for losses).

Failure to comply with the following requirements may result in the court's refusal to approve a settlement agreement:

- A settlement agreement must comply with the law and not breach the rights of third parties.
- The terms and conditions of a settlement agreement must be precise, clear, and well defined.

However, if the terms of the settlement agreement are not sufficiently precise, the court should interpret them so that the agreement can remain valid. For example, if the repayment schedule is subject to an uncertain condition, the court should set a reasonable period and calculate the penalty in accordance with that period (Ruling of the Supreme Court No. 305-##19-24867 (15 May 2020)).

## Use of Counterparts

The use of counterparts is not acceptable in Russia to complete the process of executing a settlement agreement. Settlement agreements must be signed by all parties as a single document.

## Terms of Settlement Subject to Court Ratification

To be legally binding, a settlement agreement reached after the start of judicial proceedings must be approved by a court. When it approves a settlement agreement, the court issues an order setting out all the settlement agreement's terms and conditions.

A settlement agreement that is signed by the parties but not approved by the court has no effect in court proceedings and any of the parties can withdraw from the agreement (Ruling of the Supreme Court of the Russian Federation No. 307-##16-5129 (31 May 2016), case number #56-33553/2013).

If the court refuses to approve the settlement agreement, proceedings will continue unless the parties appeal the refusal. If a party appeals against the court's refusal to approve the settlement agreement, the court of the first instance will adjourn hearings or stay the proceedings until the appeal court issues a decision. If the appeal is successful, the appeal court will remand the issue to the court of first instance.

Procedural law does not permit the court to approve a settlement agreement in part or to amend or exclude from it any terms and conditions agreed by the parties (Article 141(8), CPC; Article 153.10(8), Civil Procedural Code). However, the court may advise that the parties exclude from the settlement agreement certain terms and conditions that would be unlawful or breach the rights and lawful interests of other persons.

All court rulings, including a court's approval of settlement agreements, are generally made publicly available notwithstanding any confidentiality clauses. This includes the terms and conditions of settlement agreements.

Out-of-court private settlement agreements do not require court approval.

## Confidentiality

Although the principle of confidentiality applies to settlements (Article 138(2), CPC), it is rare in practice for settlements to be confidential, as a settlement must generally be approved by the court to be binding (see *Terms of Settlement Subject to Court Ratification*).

The only exception is where a case is heard in private, in which case the ruling, including a settlement agreement and its terms and conditions, may be withheld from the public domain. A party must apply to a judge if it wants a hearing to be held in private and must prove that confidential information may be disclosed during the hearings.

The parties can also agree to keep out-of-court settlements confidential. Breach of this obligation can lead to contractual liability.

## Powers of the Parties to Settle Compromise

A settlement agreement can be concluded in any dispute, except in certain types of cases or unless otherwise provided by law. In particular, certain disputes arising out of administrative and public law matters, such as tax and customs disputes, cannot be settled. For example, a settlement agreement cannot contain provisions reducing the applicable tax rate (Ruling of the Plenum of the Supreme Commercial Court No. 50 (8 July 2014) para 27) or deferring the payment of taxes for a period exceeding the limit provided by the Tax Code (Ruling of the Supreme Court No. 305-##18-25601 (27 May 2019)).

A party to a dispute who has legal capacity can conclude a settlement agreement and be bound by its terms. Minors and citizens who have no or limited legal capacity can only act in court proceedings and conclude settlement agreements through their lawful representatives (parents, adoptive parents, conservators, or guardians).

A sole executive body of an entity can execute a settlement agreement on its behalf, in which case the rules for approval of major transactions and interested party transactions also apply (Ruling of the Plenum of the Supreme Commercial Court of the Russian Federation No. 28 (16 May 2014)).

If a party to a dispute acts in court through a representative, the representative can only execute a settlement agreement on their behalf they have authority to do so under a power of attorney.

It is worth noting that the right of individuals and companies to conclude contracts, including settlement agreements, may be restricted by bankruptcy laws.

## Timing of Settlement

Parties can conclude a settlement agreement at any stage of litigation proceedings, including once a judgment has been handed down in the dispute. In the latter case, the court will issue a ruling to approve the settlement agreement and to confirm that the court judgment in the dispute is non-enforceable, although it remains valid.

If a settlement agreement is concluded in relation to a dispute heard by a commercial court, half of the court administration fees paid by the claimant will be returned to them, unless the settlement agreement is concluded during enforcement proceedings.

## Without Prejudice Rule

Russian law contains no provisions preventing the use of communications and documents related to the conclusion of a settlement agreement as evidence in judicial proceedings.

There are examples in Russian court practice when the court has adversely interpreted a party's readiness to enter into a settlement agreement in the dispute.

For example, in a case concerning the recovery of a loan, in which the fact that the loan agreement had been concluded was disputed, the Supreme Court of the Russian Federation held that the defendant's intention to enter into a settlement agreement with the claimant was a material consideration and should have been taken into account by the lower courts (Ruling of the Supreme Court of the Russian Federation No. 12-##15-3 (1 December 2015)).

In another case, the parties' correspondence regarding the conclusion of a settlement agreement was interpreted as evidence of the defendant's debt (Ruling of the Federal Commercial Court for the Moscow District No. #05-6134/2014 (16 July 2014), case number #40-101343/13-41-943).

A non-disclosure agreement would not be effective to prevent disclosure of pre-settlement correspondence, as only illegally obtained evidence is excluded from court.

Parties should therefore be cautious about the content of correspondence exchanged during settlement negotiations. It is recommended that any correspondence regarding settlements contain clear reservations that participation in negotiations does not constitute acknowledgement of debt or waiver of a claim, and that no other adverse consequences may be inferred against any of the parties.

## Terms of Settlement

The courts will refuse to approve a settlement agreement that includes a release clause that is too broad. For example, the courts will refuse to enforce a settlement agreement with a release clause that waives any future claims by a defendant against the claimant, whether connected with the subject of the claim or not (see Ruling of the Commercial Court for the Moscow District No. #05-16432/2015 (8 December 2015), case number #40-19251/15).

Once the court approves the parties' settlement agreement, however, the parties lose the right to make new claims, whether arising from the main obligation or ancillary obligations, by way of estoppel (this may include any unknown/future claims that arise from the same legal relation as the settled claim). The courts have held, for example, that after a settlement agreement was executed in a case on recovery of unjust enrichment, the claimant could not issue a new claim for recovery of the statutory interest accrued for the period during which the defendant retained the other party's funds (Ruling of the Presidium of the Supreme Commercial Court of the Russian Federation No. 13903/10 (22 March 2011), case No. #60-62482/2009-#7).

Until recently, a settlement agreement could only be concluded in relation to claims that were connected with the proceedings before the court. However, following the entry into force on 25 October 2019 of the Mediation Amendment Law, it is now possible to include provisions that relate to the claim but are not subject of the proceedings, for example, the parties can agree on a penalty or interest that were not considered by the court (Article 140(2.1), CPC; Article 153.9(3), Civil Procedural Code).

## Taxes on Settlements

Payments made under a settlement agreement are subject to the same tax treatment as that would apply to payments relating to obligations underlying the settlement agreement.

## Severability

The legality, validity, and enforceability of a settlement agreement are assessed by the court during its approval process. Therefore, severability clauses are usually not incorporated in settlement agreements.

## Third-Party Rights

A clause such as *Standard document, Settlement agreement (civil litigation): Cross-border: clause 17 (third party rights)* is not typically incorporated in settlement agreements in Russia. This is because an agreement will only be considered to be executed in favour of a third party if the parties have specified that the debtor must discharge an obligation to a third party and not to a creditor, whether the third party is mentioned in the agreement or not, and that such third party has the right to demand performance of the obligation in its favour (Article 430, Russian Civil Code).

Since 25 October 2019, third parties with distinct claims as to the subject matter of the dispute can be joined as a party to the agreement, whereas third parties without distinct claims can only be joined as a party if they have been assigned to perform the settlement or are entitled to accept performance (Article 139(1), CPC; Article 153.8(1), Civil Procedural Code).

A settlement agreement that is not performed voluntarily is subject to enforcement under a writ of execution issued by a court (Article 142(2), CPC; Article 153.5(2), Civil Procedural Code). A party to the settlement agreement must file an application for a writ of execution with the court in the same way as it would for enforcement of a judgment. Subject to the writ of execution being granted by the court at the instance of the parties to a settlement agreement, third parties cannot enforce a settlement agreement to which they are not a party, irrespective of the interest they have in the performance of the settlement agreement.

## Resolution of Legal Proceedings

Court approval of a settlement agreement results in termination of the proceedings. According to statistics of the Judicial Department of the Supreme Court for the year 2020, 28,023 court proceedings for economic disputes and other cases arising from civil law relationships were terminated at the first instance stage due to the parties entering into settlement agreements.

If the parties have executed a settlement agreement relating to a part of the claim, the court will continue hearing the case on its merits only to the extent not covered by the settlement agreement (Ruling of the Presidium of the Supreme Commercial Court of the Russian Federation (29 February 2000), case number 2192).

## Breach of Settlement Terms

A settlement agreement that is not discharged voluntarily is subject to enforcement under a writ of execution.

A writ of execution is issued by the court that approved the settlement agreement without a hearing and without the court verifying if the settlement agreement has been discharged. This process does not incur a further fee.

Therefore, it is not necessary to revive the original claim or file a new claim for enforcement of the settlement agreement if a settlement agreement is breached.

Failure to comply with a monetary obligation under a court-approved settlement agreement leads to liability for payment of interest at the key rate of the Bank of Russia (Article 395, Civil Code), from the day following the last day of the period set in the agreement for voluntary compliance. This is unless the settlement agreement provides for another penalty or another time for the start of interest accrual.

If the settlement agreement contains a penalty clause for failure to perform monetary obligations, interest under Article 395 of the Civil Code is not charged (Clause 52, Ruling of the Plenum of the Supreme Court No. 7 (24 March 2016)).

The remedies available for breach of an out-of-court settlement agreement include damages, penalties, or specific performance.

## Enforcement Proceedings

### Enforcement Procedure

Any settlement in a court case is contained in a court order (see *Form of Settlement*). A court order can be enforced by way of a writ of execution, for which a party must apply to the court.

An out-of-court settlement agreement is regarded as a contract and enforced as such.

### Amendments to a Settlement Agreement

Parties wishing to amend a settlement agreement previously approved by the court can file an amended settlement agreement with the court for its approval. In these circumstances, the court must state on the amended settlement agreement that the initial, superseded settlement agreement has no effect (Clause 23, Ruling of the Plenum of the Supreme Commercial Court of the Russian Federation No. 50 (18 July 2014): "On Settlement between Parties to Commercial Proceedings").

### Challenging a Settlement Agreement

As a settlement agreement only becomes effective after court approval (see *Terms of Settlement Subject to Court Ratification*), the only way to set aside the agreement is to challenge the court order that approves the settlement (Clause 23, Ruling of the Plenum of the Supreme Commercial Court of the Russian Federation No. 50 (18 July 2014): "On Settlement between Parties to Commercial Proceedings"). Court orders approving a settlement agreement can be appealed directly to the Court of Cassation, avoiding the appellate court stage (Clause 4, Ruling of the Plenum of the Supreme Commercial Court of the Russian Federation No. 13 (30 June 2020)).

A court order that approves a settlement agreement can be set aside on the following grounds:

- The parties' representatives have no powers to execute a settlement agreement.
- The executed settlement agreement breaches a third party's rights (when a settlement agreement provides for the transfer of property owned by third parties).
- The settlement agreement was executed in breach of the rules on approval of major transactions and interested party transactions (see *Powers of the Parties to Settle Compromise*).
- There are new circumstances relevant to the case which have arisen or have become known to the parties since the court's approval of the settlement agreement.

## Legal Costs

Procedural law expressly recognises the parties' right to agree on the allocation of legal costs incurred by each party to the case (Article 140 (2), CPC). Parties often exercise this right. If the parties do not agree on costs, they must bear their own legal costs incurred before the execution of the settlement agreement, and these costs will not be allocated (Clause 27, Ruling of



the Plenum of the Supreme Court of the Russian Federation No. 1 (21 January 2016): "On Certain Issues of Application of Legislation Relating to Indemnification of Costs Connected with Hearing of a Case").

## Settlement Agreements

As a rule, a settlement agreement executed under Russian law contains a provision that it will only come into force after it has been approved by the court.

Clauses relating to third-party rights (see *Third-Party Rights*), severability (see *Severability*), governing law and jurisdiction, confidentiality (see *Confidentiality*), and indemnification of losses are not typical or necessarily relevant in Russian practice.

Governing law and jurisdiction clauses are not relevant since once approved by the court, the settlement agreement is enforced as a court order subject to Russian law.

An out-of-court settlement typically includes governing law and jurisdiction clauses, which generally correspond to the same clauses in the underlying agreement (out of which a dispute has arisen).

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