

Settlement (civil litigation) Q&A: Turkey

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Country Q&A | [Law stated as at 31-May-2018](#) | Turkey

Turkey-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](#) and forms part of [Cross-border dispute resolution](#).

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?

The court must encourage the parties to settle in the preliminary examination trial, if the dispute is one that the parties could dispose of without restriction (regardless of the subject matter of the dispute). The court will notify the parties in the writ of summons to make necessary preparations relating to the preliminary examination trial.

If the court considers that a settlement offer could bring the dispute to a conclusion, it must make a settlement offer to the parties. The court will review the parties' social structure, opinions about the dispute and their expectations regarding the conclusion of the dispute to determine if it can be resolved with a settlement. In any case, the court must always ask the parties before the end of the preliminary examination trial whether they may be willing to settle their dispute (*Article 140/2, Code of Civil Procedure*).

If the court considers that the parties are able to settle, but that they need time to negotiate a settlement, it may give the parties extra time by postponing the trial date. The parties may ask for extra time, or the court can give it of its own initiative. The court should consider whether extra time is justified independently of any demands made by the parties.

Overall, the court should show a substantial will to motivate the parties to find alternative ways of reconciliation. However, the parties do not face any legal consequences if they don't settle.

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?

There are two main types of settlement agreement:

- A judicial settlement agreement (where the terms are incorporated into the court order).
- An ordinary settlement agreement which is not submitted to the court.

If the parties submit an ordinary settlement agreement before the court, the agreement will be an "extrajudicial settlement agreement", which has the force of a judicial settlement agreement.

A judicial settlement agreement is subject to formal requirements. If the parties want the settlement agreement to be effective as a court order, they must ask to make settlement before the court, orally or in writing.

When the parties declare during a trial that they want to settle, the settlement agreement is written into the trial record. This part of the record is read before the court and the trial record is signed by the parties. The fact that the part of the record reproducing the settlement agreement has been read and signed is also recorded in the trial record. A settlement agreement that does not meet this requirement is invalid.

If the parties submit a settlement agreement that they have made extra-judicially to the court, the fact that this agreement has been given to the court will be recorded in the trial record. There is no need to include the content of the settlement agreement in the trial record, although it will form an appendix to the record. The agreement should be read in front of the parties during the trial and submitted to the trial record, and the trial record must be signed by the parties.

There are no official formal requirements for an ordinary settlement agreement. Failing to follow the above formalities may mean that the settlement is not effective as a court order, although this will not invalidate the agreement between the parties.

However, the Supreme Court has held that formalities are required for settlement of certain types of dispute. For example, the settlement agreement must be in writing if the dispute relates to a debt that must be proven by a bond or deed. In a dispute about real estate ownership, if the settlement agreement regulates transfer of ownership of real estate, the settlement must be in a specific written form. This rule applies to judicial settlement agreements and extra-judicial settlement agreements.

A settlement made during the "viewing" (that is, inspection by a judge under Article 288 of the Code of Civil Procedure, also known as "discovery" or "investigation") will be considered as a judicial settlement. To be valid, the settlement must be written into the viewing record and signed after it is read to the parties.

Settlement agreements must comply with mandatory legal rules, good morals and public order, and it must be possible to abide by them. Both parties must make some concessions under the agreement.

If the parties agree on a judicial settlement, the case concludes with the settlement. A settlement agreement that has not been inserted in the court file is subject to general contract law and does not bind parties as a definitive judgment.

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?

Settlements made before the court are subject to the provisions on execution of writs and are performed like writs. Such a settlement is therefore enforceable without any further intervention of the court. The settlement is valid even if the court order has not been finalised.

A court order containing a settlement agreement must be enforced by using the original copy. If the original copy no longer exists, a true copy of an original taken from the court may be used, if it has the court approval annotation (that is, "same as original copy"). Counterparts are not used to execute settlement agreements.

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?

If the parties want to make a settlement agreement effective and binding as a court order, court approval is needed. Any settlement agreement that is made before the court is subject to court approval (see [Question 2](#)).

If the parties ask the court to decide on the basis of a settlement agreement, the agreement is formally submitted to the court file. The agreement will then be an extrajudicial agreement which will be effective as a judicial settlement

agreement. In this case, both the existence of the settlement and the provisions of the agreement are in the public domain.

If the parties do not request that the court decide on the basis of the settlement agreement, it will not become subject of a court order. In this case, the parties only request that the court records the fact of the settlement, and the court will not pass a judgment with regard to the dispute and the provisions of the settlement agreement. While the existence of the settlement agreement is accepted as a fact, the provisions of the agreement are not included in the court file and the court order does not have the characteristics of a settlement. The existence of the settlement is in the public domain, but the provisions of the agreement are not.

Confidentiality

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

If the parties ask the court to decide on the basis of a settlement agreement, the hearing minutes are public and the agreement is generally not confidential (as the principle of publicity applies to case files). However, the court can issue a confidentiality order making the settlement agreement confidential. Confidentiality is rare in private law cases.

If the parties settle extra-judicially and do not notify the settlement to the court, they may include a confidentiality agreement in the settlement agreement (which will be subject to the law of contract). However, the agreement may still be used as evidence if there is a dispute, and therefore lose its confidentiality.

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?

Parties are only able to settle disputes in relation to matters over which they have capacity to act freely. This includes disputes relating to:

- Contract law.

- Property law.
- Law of inheritance.
- Civil law.
- Commercial law.
- Bankruptcy law.

A settlement agreement must not be contrary to mandatory legal rules, good morals or public order, and it must be possible to abide by.

A settlement agreement relating to matters over which the parties do not have power of disposition is invalid, regardless of whether the courts have been involved. Examples of these matters include disputes regarding paternity and divorce, and disputes regarding land registration. However, it is possible to conclude a valid settlement agreement concerning secondary performances of suits of paternity and divorce with the approval of the court.

A settlement agreement is a synallagmatic agreement, that is, each party to the agreement is bound to provide something to the other. Therefore, the parties must have legal capacity to enter into a settlement. If a settlement agreement is made before the court, the court will examine whether the parties have legal capacity.

If a natural person does not have legal capacity to enter into a settlement agreement, they will be represented by their legal representative who will sign the agreement on their behalf. Legal persons are represented by their authorised body. In both cases, the legal representative or authorised body will be automatically empowered to act on behalf of the relevant party without the need for a specific authority clause.

By contrast, lawyers acting as voluntary representatives of the parties must have powers to conclude a settlement agreement on their behalf. This should be listed in a power of attorney as power "to settle".

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 agreements may be concluded at any point before a verdict is issued.

If a settlement agreement is made during the first hearing (the preliminary examination), the parties will be liable for one-third of the court fee (equal to 3.6% of the value of the claim). If the agreement is concluded after the first hearing, the liability will be two-thirds of the court fee.

If a settlement agreement is signed before the preliminary examination and there is no provision to the contrary in the settlement agreement, the parties must pay half of their attorneys' official fee. If a settlement agreement is

signed after the preliminary examination and there is no provision to the contrary in the settlement agreement, the attorneys' fee should be paid in full (*Turkish Legal Profession Act*).

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?

There is no equivalent in Turkish Law to the "without prejudice" concept in English Law. These issues are governed by the Turkish Law of Obligations and Turkish Contract Law.

Under Article 188/3 of the Code of Civil Procedure, acknowledgements and admission statements made, in written or verbal form, during settlement negotiations are not binding. This is to enable the parties to conduct the negotiations openly and with sincerity. In practice, it is common for the parties to conclude confidentiality agreements, also known as "without prejudice".

In addition, the 8th Civil Chamber of the Supreme Court has held that "...The issues submitted by the parties during settlement negotiations are considered as proposals and cannot be held against that party, in case the lawsuit is concluded without an amicable settlement." (*File no: 2015/4761, Decision no: 2016/14040, 18.10.2016*).

Documents and correspondence issued during settlement negotiations may be used as secondary evidence in court if they constitute a commencement of written proof, in which case they can be supported by witness statements (*Article 202, Code of Civil Procedure; see also File no: 2017/28715, Decision no: 2017/6400, 28.03.2017, 8 Civil Chamber of The Supreme Court*).

However, if the parties settle extra-judicially and do not notify the court, they may include a confidentiality clause in the settlement agreement, or execute a confidentiality agreement before the settlement negotiations, to prevent such documents from being disclosed to the court (see [Question 5](#)).

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.

Release clauses may be included in a settlement agreement. It is not necessary for the parties to enter into a further agreement providing for a new release clause after entering into the settlement agreement. If a settlement agreement resolves a debt, the release of the debt is fundamental to it. A settlement agreement may not include a release clause in relation to unknown existing claims or future claims in relation to the debt.

In Turkish law, there is a distinction between settlement agreements and release agreements. A settlement agreement requires that all parties make concessions, while a release agreement does not. Contracts that have both "settlement" and "release" titles and regulate these two under the same title raise difficulties in practice.

There are specific restrictions on release agreements that apply if a release is included in a settlement agreement. For example, certain claims relating to limited rights in rem which give the right holder the power to use and benefit from the property can be released only with the consent of the beneficial owner.

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?

A negotiated settlement is considered as a contract, so payments made under it are subject to taxation, although payments made under a writ of tribunal are not.

Money received under a settlement agreement is subject to income tax, and money paid can be recorded as an expense in calculating profit for the purposes of income tax (*Article 40/3 relating to taxation in commercial income, Code of Income Tax numbered 198*). The Council of State has also issued a decision to the same effect.

Payments made under a settlement agreement are subject to a 0.825% stamp tax (*Stamp Tax Code numbered 488*).

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?

It is possible to apply the severability rule. An entire settlement agreement may only be void because of illegality, invalidity or unenforceability of a part of it, if that part affects the whole settlement made by the parties. General contract law applies to this issue.

If one part of a settlement agreement is subject to formalities and the settlement agreement could have been drawn up without that part, a failure to obtain the required formalities only voids that part of the agreement.

A settlement agreement may be nullified if the requirements of a private law contract are not met (see [Question 2](#)). Severability clauses are not regulated in the Turkish Code of Obligations (Obligations code).

A judicial settlement agreement can be invalid under procedural law and substantive law. If a judicial settlement agreement is void under procedural law, it continues to be valid under substantive law. The Supreme Court has clearly held that judicial settlement agreements may be voided in the event of defective will, incapacity and incompetency, as a judicial settlement is an agreement subject to both procedural and substantive law.

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?

A third party may enforce their right to have actions specifically referred to in a settlement agreement performed.

Settlement agreements are subject to the law of obligations. The Obligations code states that an agreement may be drawn up in favour of a third party. Therefore, it is possible to conclude settlement agreements including provisions in favour of third parties who are not party to the lawsuit or settlement agreement. This includes settlements made before the court. A third party that benefits from a settlement agreement may enforce performance of the agreement and may commence execution proceedings without the participation of any of the original parties to the agreement.

Parties to a settlement agreement can restrict a third party's ability to commence execution proceedings by itself, by including a clause to this effect in the settlement agreement.

Disposal of legal proceedings

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

Judicial settlements and extra-judicial settlements

After the parties to a dispute have settled, the court will decide that there is no need to give a verdict. The settlement will take the place of the verdict and the case will be closed.

A case closed with a settlement will result in a final judgment. If the parties to the settlement bring new proceedings with regard to the same subject matter, the court will dismiss the new case.

A judicial settlement can only be appealed on procedural grounds. The parties can claim that the settlement is invalid, for example through lack of consent, without applying for a retrial of the original case.

Settlements not submitted to court (ordinary settlements)

A settlement agreement that is not submitted to the court cannot constitute the basis of a decision by the court. The court will decide that there is no need to give a verdict, but there will be no final judgment.

If the parties conclude the dispute between them with a settlement agreement but do not declare this agreement to the court, there are three possibilities:

- The plaintiff can declare (orally or in writing) that they wish to withdraw from the case. The plaintiff must then pay the litigation expenses. The plaintiff's withdrawal has a similar effect to a final judgment. It may only be appealed on procedural grounds. Withdrawal of a case may not be made subject to conditions.
- The defendant may declare to the court that it accepts the case (either through a petition or orally during the trial). Formal requirements must be met for this to be valid. It is not necessary to obtain the consent of the plaintiff or the court. If the court considers that the acceptance is valid and concludes the matter under dispute, it will accept it. The defendant must then pay the litigation expenses. In contrast to a settlement, the withdrawal and the acceptance of a case cannot be conditional.
- The parties may choose to discontinue the proceedings. The case is then concluded and if a renewal claim is not made within three months, cancelled.

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?

If a settlement agreement was made before the court, a fresh claim must be made to enforce it.

In the case of a breach of an ordinary settlement agreement, the injured party may only bring a claim for breach of the agreement. An ordinary settlement agreement may not be rescinded unilaterally (as it is a contract) but the parties may terminate it by mutual agreement. The parties may also agree to amend the settlement agreement.

If a settlement agreement is subject to conditions that have not been actualised or fulfilled, a party can bring a lawsuit asking for the agreement to be dissolved. However, the court may consider that non-fulfilment of a condition only justifies an order for performance of the condition, rather than dissolution of the agreement.

Enforcement proceedings

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

- Settlement deed/agreement?
- Court order?

An ordinary settlement agreement is binding only on the parties to the agreement, and is more difficult to enforce than a judicial settlement agreement. The parties may commence enforcement proceedings with documents that prove the existence of the agreement, or they can initiate a separate claim for the performance of the agreement.

In a land registration case, the 14th Civil Chamber of the Supreme Court held that a settlement agreement that was issued in an ordinary written form and not written into the trial record nor mentioned to the court by the parties, could not become a judicial settlement agreement. Therefore, even if the parties demanded the registration of the land according to the agreement, the obligation to transfer ownership did not arise. (*File no: 2005/4833, Decision no: 2005/8901, 11.10.2005*).

A judicial settlement agreement can be enforced as a court order (see [Question 3](#)).

Setting aside a settlement

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

Changing the terms of a settlement agreement

Judicial settlement agreements cannot be varied.

The parties may execute an amended ordinary settlement agreement in front of a notary public. Notary public documents that acknowledge the existence of a pecuniary debt and edited ex officio have the force of a court order (*Article 38, Execution and Bankruptcy Code*).

Ordinary settlement agreements are subject to the Obligations Code. An agreement made in writing can only be amended in writing (*Article 13, Obligations Code*), although there is a view that a settlement agreement does not fall within the scope of this. Even if an agreement is subject to formal requirements, a debt may be discharged completely or partially by a release agreement without any formal requirements (*Article 132, Obligations Code*). It is believed that this can be applied by analogy to ordinary settlement agreements, and that consequently the provision of release may be added to a settlement agreement without being subject to formal requirements.

Cancelling a settlement agreement

A judicial settlement agreement may become inoperative for reasons of substantive or procedural law. A settlement agreement is null if it breaches mandatory provisions of the law, ethics, public order or individual rights, or if the subject matter of the settlement is impossible or does not rely on a just cause (*Obligations Code*). A settlement agreement is also null if an illegal or negligent act is agreed on as a condition of the settlement agreement.

It is also possible to terminate a settlement agreement because of a defective will. As with all contracts, if fault, fraud or coercion result in a defect in the will of the parties, or if provisions of the settlement agreement substantially damage one of the parties (that is, there is a disproportionately negative effect on one party achieved by the other party exploiting its carelessness or inexperience), it is possible to sue for the cancellation of the settlement. A separate lawsuit must be brought to this effect.

A settlement agreement may be rendered void due to procedural law. In this case, the settlement agreement does not conclude the case. However, a judicial settlement agreement that is void for procedural reasons may continue its existence as an ordinary settlement agreement. The following are some of the procedural defects that may render a judicial settlement agreement void:

- Lack of capacity to sue or to be a party to legal proceedings, of one or both parties to the case.
- Submitting the judicial settlement before a person other than the judge.
- Failing to properly record the agreement in writing.

Ordinary settlement agreements can be cancelled or terminated according to the provisions of contract law.

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?

The parties can include a provision on costs in a settlement agreement. If they do not do so, the court will give them an opportunity to settle the matter of costs. If the parties cannot agree, the court designates a payment amount for each party based on the terms of the settlement. If the parties are represented by an attorney, the associated costs are determined in the same way.

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?*

A settlement agreement executed before the court is usually recorded in as much detail as *Standard document, Settlement agreement (civil litigation): Cross-border*. If the settlement agreement needs to be elaborated and enlarged, it can be drawn up comprehensively as a contract governed by civil law.

While giving a settlement agreement the title "settlement release agreement" is common, it could in practice give rise to confusion in Turkish law (see *Question 9*).

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