

Settlement (civil litigation) Q&A: Mexico

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Mexico - 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, Settlement: Cross-border](#) 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?

In addition to the Mexican Federal Code of Procedure, each of the 32 states in Mexico has its own Code of Civil Procedure, which may contain rules about settlement discussions. Under the Mexico City Code of Civil Procedure, for example, a special hearing is held in which the parties are encouraged to settle the dispute before going to trial.

An exception is commercial proceedings under the Mexican Commercial Code, which do not offer any formal opportunity for settlement during the procedure. However, all judges should make the parties to the dispute aware of the availability of a public alternative dispute resolution centre which is free of cost.

Any agreement reached by the parties before the issuance of the ruling is valid and constitutes *res iudicata*. However, all settlement negotiations are voluntary. Consequently, no costs can be awarded against any party who refuses to participate in settlement negotiations.

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?

Settlement agreements must be formally executed in writing (*Article 2945, Mexico Federal Civil Code (Civil Code)*) (see *Question 3*). If the parties reach a settlement agreement during judicial proceedings, the agreement can be filed before the court and the parties can request a court order declaring the agreement to be final and enforceable. The proceedings will then be dismissed and the settlement agreement will become the definitive and fully enforceable resolution of the dispute (see *Question 13*).

Alternatively, the parties can file a lawsuit to validate a verbal or electronic agreement.

All settlement agreements are legally binding and fully enforceable. A settlement agreement purporting to dispose of matters of criminal and family law is invalid (see [Question 6](#)).

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?

A settlement agreement must be formally executed in writing (*Article 2945, Mexico Federal Civil Code (Civil Code)*). A settlement agreement purporting to dispose of matters of criminal and family law is invalid (see *Question 6*).

Multiple copies of a settlement agreement can be executed, but all such copies must be effectively signed by each party to be valid: the practice of using counterparts is not valid in Mexico.

A public notary can issue a certified copy of an original agreement; such a copy would be considered equally binding.

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?

Parties need only file a settlement agreement before the court if a settlement is reached when judicial proceedings are already underway. The agreement and its terms are not a matter of public record, even when the settlement agreement is filed before the court during judicial proceedings. Documents in judicial archives are considered to be private and are usually destroyed after six months.

Confidentiality

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

Settlements in Mexico are not automatically confidential. Therefore, provision must be made in the agreement to ensure confidentiality. The confidentiality clause set out in the [Standard document, Settlement Agreement \(Civil litigation\): Cross-border: clause 13](#) is suitable for use in Mexico.

Power 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?

Only the legal representative of a company or a power of attorney holder with sufficient transfer of property authority can execute a settlement agreement. The following matters are excluded from settlement agreements:

- The right to receive alimony.
- Future estates.
- Criminal liability.
- Civil status.
- The validity of a marriage

The parents and guardians of a child can only settle on behalf of their children or wards if the agreement is necessary or beneficial for the children concerned.

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 any time before the ruling is made. A faster settlement reduces legal representation costs and other costs associated with judicial proceedings.

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 applies only if explicitly agreed between the parties to a settlement negotiation. The parties usually agree on a general provision that states that all documents that are exchanged during the settlement negotiations would be subject to the without prejudice rule. All documents would have to be subsequently identified for such purposes upon exchange by means of labelling. The only circumstances in which the documents subject to the without prejudice rule would be disclosed would be by means of a court order.

If the negotiations are informal and nothing is agreed regarding the without prejudice rule, the parties can freely use any documents and information provided during the negotiation.

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.

The limitations on the scope of release clauses that may be agreed by parties with respect to existing and future claims concern overlooked documents, rulings or situations that, if known at the time of the execution of the agreement, may have changed the results of the negotiations. For example, an agreement related to a dispute, in which a ruling exists that the parties are unaware of, is invalid (*Article 2958, Civil Code*).

In addition, if documents used as the basis of a settlement agreement are later deemed to be invalid, the settlement agreement will be nullified (*Article 2956, Civil Code*). Finally, if a party intentionally refrains from sharing a key document during the settlement negotiations, the agreement may be nullified (*Article 2957, Civil Code*).

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?

Income tax is payable on any consideration derived from a settlement agreement. However, if a settlement agreement is executed while a company is being reorganised under the Mexican Bankruptcy Law, income tax on any consideration may not be due.

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?

Severability clauses are commonly included in settlement agreements. However, even if a severability clause is not included, the Civil Code recognises a contract conservation principle that implies a general severability clause into any contract.

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?

Third party rights may be granted in a settlement agreement and enforced. By way of example, the following clause would be considered valid in Mexico:

[Except as set forth in Section 17.2 below,] [the/The] parties do not confer any rights or remedies upon any Person other than the parties to this Agreement and their respective successors and permitted assigns.

[The parties hereby designate [NAME/CLASS OF PERSON] as third-party beneficiaries of [SECTION] of this Agreement [having the right to enforce [SECTION]].]

Parties can include a clause stating that the agreement does not generate any third-party rights, which would serve as an interpretative clause to avoid the conferral of any rights of this type. The third-party rights clause set out in [Standard document, Settlement Agreement \(civil litigation\): Cross-border: clause 17](#) is suitable for use in Mexico.

Disposal of legal proceedings

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

The parties can jointly file for a dismissal of the case, exhibit the executed settlement agreement and request that the court issue an order declaring the agreement to be final and enforceable. The parties can also jointly request that the proceedings be suspended for a certain period if they are conducting settlement negotiations.

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?

A settlement agreement is fully enforceable and therefore can be summarily executed before either the original court or by means of a fresh claim. In both cases, injunctive measures can be granted.

Enforcement proceedings

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

- **Settlement deed/agreement?**
- **Court order?**

A settlement agreement can be executed summarily. If the agreement was filed before a court, the recognition of enforceability by the court, in the form of a court order, will allow any party to request its execution. If the settlement agreement was privately negotiated, any party can file for summary judgment and injunctive measures.

Setting aside a settlement

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

For a settlement to be unilaterally set aside, a lawsuit must be filed before a civil or commercial court. However, there are limited circumstances in which a settlement may be set aside, as the law recognises settlement agreements as fully enforceable. For example, the agreement may be set aside unilaterally if it was executed in relation to excluded matters (see *Question 6*), or if pertinent information or documents were unknown at the time of the execution of the agreement. The parties can jointly modify the settlement agreement with the addition of an addendum or an amendment 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 can be included in a settlement agreement, and it is advisable to do so if the parties intend to establish a specific distribution of liability for costs. If, on the contrary, the parties intend to bear their own costs, the clause may be unnecessary. This is due to the fact that, if a dispute is settled before an award is made, each party would have to bear their own costs. The clause on costs set out in [Standard document, Settlement Agreement \(civil litigation\): Cross-border: clause 7](#) is suitable for use in Mexico.

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](#)?

There are no clauses missing from [Standard document, Settlement agreement \(civil litigation\): Cross-border](#) that are required for a settlement agreement executed in Mexico.. A party cannot renounce its right to sue under Mexican law and therefore [Standard document, Settlement Agreement \(Civil litigation\): Cross-border: clause 6](#) would not have effect in Mexico.

In addition, for a document to express the consent of a party, an original signature must be included (see [Question 3](#)). Consequently, a scanned version of a partially signed agreement is not enforceable. A settlement agreement is not fully executed until all signatures are included in the document, and before a court a scanned version of a signed document has little value as evidence. Therefore, [Standard document, Settlement Agreement \(civil litigation\): Cross-border: clause 18](#) would not have effect in Mexico.

[Clauses 6](#) and [18](#) are therefore considered void

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