

**Settle for less...? Or for more! Tips on timing,  
confidentiality and strategy in  
(multijurisdictional) settlement agreements**

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**Jun Yang**

Jade & Fountain PRC Lawyers  
31/F, Tower B, Far East International Plaza, 317, Xian Xia Road, Shanghai  
200051, China  
86-21-62351477  
jun.yang@jadefountain.com

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# 1. QUESTIONNAIRE FOR CIVIL LITIGATION

## 1.1 General issues

### 1.1.1 How do you define the term “settlement” in civil procedures?

In Chinese judiciary practice, we have two types of settlement: out-of-court settlement and in-court settlement.

#### a. Out-of-court settlement

The Chinese court may allow the parties to reach an agreement to settle the disputes among them. Such agreement itself is contract only without bearing the executory force as the notary act or final judgment does. Should any party fail to enforce its obligation under such settlement agreement, the settlement agreement can only be used as evidentiary document in a new court action.

#### b. In-court settlement

The settlement reached by the parties in the conciliation procedure is enforceable per se. In most cases, such settlement shall take the form of settlement paper issued in the name of the Court concerned.

### 1.1.2 Are there statutory provisions (e.g., in your civil procedural rules or substantive rules) dealing with settlements?

- Yes. The entire chapter 8 of *PRC Civil Procedure Law* deals with this issue.

### 1.1.3 Are there ethical rules and guidelines that affect your negotiation strategies in practice?

- Yes.

Firstly, both parties to a settlement must have full knowledge of the nature of the agreement.

Secondly, neither party shall intentionally misrepresent the facts.

Finally, neither party must be forced to enter into the settlement agreement.

A settlement violates any of these three rules is void.

### 1.1.4 Is there a specific point in time in the history of a case that is particularly suitable for settlement discussions?

- Basically, under Chinese judiciary practice, the parties are allowed to reach settlement in all stage of a case. The timing of the settlement (proposal, negotiation, finalization) is elaborated and decided on a case by case basis depending on the overall strategy for each case. This being said, we believe in general the most appropriate timing should be situated after the cross-examination procedure when we have a better understanding of the weak and strong points of the case.

1.1.5 We assume that all jurisdictions know the out of court settlement. Is it, however, frequent in your jurisdiction that the court or the judge facilitates settlement discussions between the parties? What enables (if yes) or prevents (if no) the court from doing so?

- Settlement/conciliation is omnipresent Chinese judiciary practice. The judge is much motivated in enquiring the intentions and opinions of the parties and proposing the settlement.
- The popularity of the settlement could be explained by several factors:
  - (a) The face culture and the conciliation in Asian traditional value;
  - (b) The pragmatical mindset;
  - (c) To render the dispute resolution more cost efficient
  - (d) Limited judiciary resources

## **1.2 Enforcement of settlement**

1.2.1 Are there differences between the in court and the out of court settlement, for example with respect to their effect in enforcement proceedings? Are there other practically relevant differences?

- Yes, as stated before, in court settlement is enforceable *per se* while out of court settlement is not.
- Yes, in court settlement should be made in writing save in a number of exceptional circumstances explicitly provided by law while out of court settlement is not subject to such formalism.

## **1.3 Confidentiality and privilege**

1.3.1 Does your jurisdiction consider a civil settlement agreement and the discussions/correspondence leading to such a settlement confidential by law or other rules (e.g., ethical rules) or do the parties have to agree on confidentiality in the context of their settlement or the settlement discussions?

- No. Though the legal community suggest that in court settlement be kept confidential, currently, the in court settlement are in theory rendered public as the Judgment.
- Regarding the out of court settlement, it is up to the parties concerned to decide whether it should be kept confidential.

1.3.2 What means do you have to protect the confidentiality of your settlement and related discussions/correspondence for civil and other procedures?

- The confidentiality can only be protected through including confidentiality clauses in the settlement.

1.3.3 What are possible consequences of a breach of confidentiality?

- As stated above, there are no mandatory requirement prohibiting disclosure of the settlement. Therefore, breach of confidentiality will only give rise to contractual liability such as the lump sum penalties.

1.3.4 Are you allowed to disclose the settlement agreement in other proceedings

- a) between the same parties?
- b) between other parties?
- We are allowed to disclose in court settlement agreement in other proceedings. We are also allowed to disclose out of court settlement in other proceedings unless otherwise agreed in the agreement.