Italy specific information concerning the key legal and commercial issues to be considered when drafting Termination Agreement for use internationally.

This Q&A provides country-specific commentary on Practice note, Termination Agreement: International, and forms part of Cross-border employment.

See also Standard document, Termination Agreement: International, with country specific drafting notes.

## FORM OF SETTLEMENT

1. **In your jurisdiction, how can parties record a mutual termination agreement between them?**

   The employer and the employee sign an agreement in which they express their intent in writing to mutually terminate the employment contract, identifying the possible mutual waiver of notice charges.

2. **What is the name used for the type of agreement that records the termination of employment where a current or former employee agrees to waive or settle a claim (or more usually, all possible claims) against the employer in return for a payment?**

   They are called settlement agreements. In Italian the technical name is “rinunzie e transazioni”, as mentioned by Article 2113 Italian Civil Code; in normal language they are called “accordo per la definizione del rapport”.

## STATUTORY OBLIGATIONS

3. **Are there any legal requirements for employment termination agreements in your jurisdiction?**

   When coming to an agreement on the mutual termination of the employment relationship, the parties are free to choose what clauses to include in the contract. They usually decide to include:

   - A clause where the employer agrees to grant the employee a sum of money as an incentive for the employee to terminate the contract.
   - A clause where the employee renounces all possible claims against the employer.

   However, a general waiver is effective only six months after its signature (or immediately if signed before either Unions or the Ministry of Labour) (Article 2113, Italian Civil Code).
There is no obligation nor requirement to involve Unions or Works Council in this kind of agreements, because they are the result of a private negotiation between the employer and the employee.

**SCOPE OF SETTLEMENT**

4. Are there any restrictions on the type of disputes which can be settled by parties in an agreement on termination of employment?

There are no restrictions. In the agreement on termination of employment, the employee needs to renounce any possible future claim against the employer. The waiver is not legally required; in fact, the parties can only agree to mutually terminate the employment relationship, but it is standard also to have a full waiver by the employee towards the employer, in order to avoid any possible future claim arising from the employment relationship. In this case, once the employment relationship is terminated and once a full waiver agreement is signed, the employee will not be able to raise any sort of claim towards the employer concerning that employment relationship if a settlement agreement has been entered into.

**TIMING OF SETTLEMENT**

5. In your jurisdiction, when should the termination agreement be provided to the employee?

It might happen that the parties to the employment contract do not express their intent to terminate the employment relationship simultaneously, but at different times.

In that event, once the termination of the employment contract has been arranged by the employer, this has to be notified to the employee, who has to accept it by signing the termination agreement. Only once the employer has received the employee’s acceptance (that is, through the employee’s signature of the agreement), the employer must report the fact within five days to the relevant public office that has as one of its tasks the aim to match the demand and supply of work.

**PRE-AGREEMENT NEGOTIATIONS**

6. Does ‘settlement privilege’ and/or ‘without prejudice’ apply to termination negotiations and the settlement terms in your jurisdiction?

Under Italian law there is no duty to include a clause that concerns the privilege status of termination negotiations. Nonetheless, the parties to the contract may decide to include it in their agreement, establishing for instance that any matters discussed and decided during the negotiations will not be used as evidence in a trial.

7. Can pre-termination agreement negotiations become legally binding in any circumstances?

During the negotiations, the parties have a duty to act in good faith, which means that they have to behave in a way consistent with the duty of loyalty, protecting the interests of the counterpart.

In addition, the parties have a duty to say whether there is any situation that could make the conclusion of the contract invalid.

If the parties violate such obligations during the negotiations, they can be held responsible before the court. This means that a party who violates the general duty of “good faith” and “loyalty” can be sued for damages by the other party.

There is no predetermined fine, but the judge can ascertain that the pre-termination behavior of one party was incorrect and in violation of good faith and loyalty principles and can state a fair compensation.

Negotiations are not legally binding in Italy. The parties are bound only when the agreement is reached.

Obviously the behaviour of the two parties during the negotiation process is relevant in terms of the good faith and the loyalty principles, and the violation of these two principles can incur sanctions from the court.

8. Should the agreement specifically state that it is without prejudice and subject to contract as set out in Standard document, Mutual termination agreement (employment): International, clause 13? Are these concepts understood in your jurisdiction?

No, it should not. Usually, the parties agree to renounce any possible future claim concerning that specific employment relationship. Nonetheless, the parties could always choose to include a clause such as Standard document, Mutual termination agreement (employment): International: clause 13 in the agreement, but this rarely happens.

**PARTIES**

9. What information needs to be included about the parties at the start of the agreement?

The parties’ respective addresses and fiscal codes must be included in the agreement.
TERMINATION DATE

10. Can the parties agree any date when the employment will end (Standard document, Mutual termination agreement (employment): International, clause 1)?

Generally speaking, the party who wants to withdraw from the employment contract has to give notice before the withdrawal becomes effective. The notice period is normally stated by the national Collective Labour Agreements, which rule the notice period in case of dismissal and in case of resignation. The notice periods will vary depending on the level of the employee and seniority within the company. In the case of mutual termination of the employment relationship, the parties can agree a different notice period, or waive it. The notice period has the aim of avoiding a sudden and unexpected withdrawal from the contract that might cause damages to the other party.

During this period, the employment contract is executed without any change concerning its terms and conditions. A party (whether employer or employee) that does not respect the notice period has to give the other party compensation in lieu of notice.

This duty to give a notice period before terminating the contract does not apply to cases involving a mutual termination of the employment contract, because parties can agree a different notice period or waive it.

SEVERANCE PAYMENT

11. Can the employee be placed on garden leave prior to the Termination Date (Standard document, Mutual termination agreement (employment): International, clause 3)? If so, can any untaken annual leave or time off in lieu be offset against the garden leave period.

Garden leave is not allowed under Italian law, but in the event of mutual termination of the employment contract, garden leave can be agreed. The parties are able to negotiate on any point and come to an agreement on it. Given that garden leave is not allowed in Italy, the parties can agree to let the employee enjoy his untaken holidays before the termination of the employment.

12. What must be included in the amount paid to the employee under the mutual termination agreement at Standard document, Mutual termination agreement (employment): International, clause 4 in your jurisdiction? How are the various amounts calculated?

When the employment contract is terminated, the employer has to pay:

- The employee’s outstanding salary.
- Severance payment (the so called TFR; approximately one month’s salary per year of service).
- Compensation in lieu of the notice period (if agreed by the parties to the contract).
- Accruals (in Italy, the national collective labour agreements (NCLA) provide that the salary is paid in 13 or in 14 (depending on the NCLA) monthly instalments. The 13th and 14th monthly instalments are accrued monthly on a pro rata basis. When the employment contract terminates, the employee is entitled to be paid the accrued pro rata 13th and 14th instalments).
- Any accrued holidays.

This has to be done in accordance with the time required for the organisation of the payslips in occasion of the termination of the contract (the timing will depend on how payslips are organised).

VOLUNTARY PAYMENTS

Additional payments which can also be made are:

- A lump sum as an incentive for the employee to leave the job.
- A lump sum as consideration for the employee’s waiver of any claim against the employer.

In our jurisdiction, it is common to agree in the termination agreement certain amounts that need to be paid to the employee. In particular, the parties usually agree an amount that the employer has to pay as an incentive for the employee to leave the job, and an amount given in order not to be brought before a tribunal by the employee. These two amounts must be specified discretely, because they have different
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13. Under local laws, how do the amounts payable to the employee vary depending on whether the employment is terminated with or without cause? Please cite any relevant statutory provisions.

Under Italian law, there is no severance amount mandatory due, a part from the mandatory payments (see Question 12). Obviously the parties can agree a leaving package for avoiding any claim against the employer, particularly in the case of dismissal.

The payment in lieu of notice varies depending on the applicable National Collective Bargaining Agreement. The notice period does not have to be adhered to in the event of gross misconduct.

14. Are taxes payable on the payments made to employees on termination in your jurisdiction? If so, does this need to be stated in the agreement?

The payments made in favour of the employee on termination are subject to taxation. This does not necessarily need to be stated in the agreement.

15. In your jurisdiction, are there any time limits imposed by law on when payments need to be made to employees on termination?

As a general rule, the payments to which the employee is entitled need to be given when the employment contract is terminated. Alternatively, the parties can negotiate and decide when the payments are due to the employee. A delay in payment must be agreed by the parties. If the employee does not accept any delay, but the employer cannot immediately afford the payment, the employee can ask the judge for an immediately enforceable injunction.

16. In your jurisdiction, are there any limitations on the scope of the release clauses with respect to existing and future claims, whether known or unknown, as set out in Standard document, Mutual termination agreement (employment): International, clause 8? Please cite any relevant legal provisions.

There are no limits in this regard. The parties are free to sign an agreement in which they decide to renounce any possible future claim regarding the employment relationship. Alternatively, they can decide to agree that they may be entitled to raise a claim in the future. This is entirely up to them.

REFERENCES

17. Is it common in your jurisdiction, to include a mutually agreed reference in the termination agreement? Can the wording of the reference be set out in a Schedule and can an employer decline to give the agreed reference if new circumstances come to light as set out in Standard document, Mutual termination agreement (employment): International, clause 7?

It is not common to include a mutually agreed reference in the agreement. Nonetheless, the employee can always ask the former employer to provide a reference. However, the employer is not obliged to give it. If the employer decides to give a reference to the employee, it will have to explain what makes that person qualified and why that person would provide added value to the company.

It is not common to include a mutually agreed reference in the agreement, but the parties are free to include it, if they want. Once included, the reference must be provided, unless the agreement specifies circumstances in which the employer can decline (please bear in mind that these circumstances must be objective, and clearly stated and listed; in no case can the employer decide ad hoc whether or not give the reference).

18. Does a reference need to be filed with any government authority?

No, it does not. The employer who provides the reference has to sign it and leave an address where the employer can be reached by potential recruiters of the former employee. The employer can also include a stamp of the company at the end of the letter, although this is not mandatory.

CONFIDENTIALITY

19. Are there any formalities or requirements to ensure that the confidentiality clause at Standard document, Mutual termination agreement (employment): International, clause 6 is valid and enforceable in your jurisdiction?

The parties may decide to introduce such a clause in their agreement, consistent with Articles 1175 and 1375 of the Civil Code (which state respectively that the parties have to act with honesty, and must show good faith when negotiating and concluding an agreement).

In addition, the employee has a duty of loyalty, meaning that there is a prohibition on disclosure of information related to the company organisation and a prohibition on using that information in a way that could cause a prejudice to the company (Article 2105, Civil Code).
Further, the parties can include a non-compete clause, which limits the activity of the employee in return of a certain amount of money given by the employer (Article 2125, Civil Code). The commitment not to compete cannot exceed five years from termination if the employee is a director, while in all other cases the limit is three years.

A clause will be considered invalid only if it is essential to the contract. Therefore, separability clauses are not that common in a mutual termination agreement, although parties can still choose to include them.

**EXECUTION FORMALITIES**

22. What are the formal requirements for executing a valid termination agreement in your jurisdiction? Do the terms of settlement require court approval? Does the agreement or any reference need to be filed as a matter of public record?

The parties have to sign the termination agreement, there is no requirement to have the contract in Italian language.

All the relevant documents about the transaction and the employment termination have to be transmitted to the “Direzione Territoriale del Lavoro”, a governmental authority which records all termination agreements.

Alternatively, the documents can be brought to the “Centro Servizi per il Lavoro” or to the governmental office specified in the collective bargaining agreement applicable to that employment relationship.

The relevant information needs to be sent within 30 days starting from the date of mutual termination of the employment contract, which otherwise would be ineffective.

The agreement needs to have been accepted by both parties, rather than being imposed by the employer on the employee. The requirement for the agreement to be provided to the local governmental authority is in order to check that the employee’s will is genuine.

**SEPERABILITY/ SEVERABILITY**

21. In your jurisdiction, are separability clauses commonly incorporated within mutual termination 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 courts customarily tend to preserve the contract as a whole, even if a clause is invalid. In fact, only in rare cases will the courts consider the entire contract void.

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