

DABELSTEIN & PASSEHL

Rechtsanwälte  Hamburg · Leer





Settlements -

The German perspective

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Agenda

- A. Encouraging settlements – prejudiced judge/arbitrator?**

- B. Enforceability of settlements**





A. Encouraging settlements – prejudiced judge/arbitrator?

I. The legal situation

Section 278 para. 1 German Civil Procedure Code:

“The court is to be in the position at any time in the proceedings to consider an amicable settlement of the legal dispute or of individual points in dispute.”



A. Encouraging settlements – prejudiced judge/arbitrator?

Section 278 para. 2 German Civil Procedure Code:

“Conciliation is to take precedence over oral negotiations for the purpose of the amicable resolution of the legal dispute, unless there has already been an attempt at settlement before a non-state court conciliation committee or the conciliation hearing appears to be recognisably without a chance of success. The court, during the conciliation hearing, has to discuss the status of the proceedings with the parties under a free appraisal of all circumstances (...)”



A. Encouraging settlements – prejudiced judge/arbitrator?

II. The approach by German courts / arbitrators in practice

- Parties present their case in written statements
- The court hints at possibly missing facts
- In the oral hearing the court expresses its (preliminary) views on the legal situation and may make a settlement proposal
- The court may at any later stage of the proceeding encourage a settlement





A. Encouraging settlements – prejudiced judge/arbitrator?

III. Conclusion

- Definition of “prejudiced”:

“Determined by a prejudice and therefore not objective”

Definition of “prejudice”:

“View taken hastily or adopted without an examination of the objective facts, mostly formed from hostile feelings against someone or something”

- Concern about prejudice?

No !





B. Enforceability of settlements

I. Types of settlements

- 1. Out of court settlement**
- 2. Settlement in court**
- 3. Settlement in arbitration**
- 4. Lawyer's settlement**
- 5. Notary's settlement**
- 6. Settlement before a non-state court conciliation committee**





B. Enforceability of settlements

II. Enforceability

- | | | |
|---------------------------------------|--------------------|---------------------|
| 1. Out of court settlement | FRG: No | EU: No |
| 2. Settlement in court | FRG: Yes | EU: Yes |
| 3. Settlement in arbitration | FRG: Yes/No | EU: Yes/No |
| 4. Lawyer's settlement | FRG: Yes | EU: disputed |
| 5. Notary's settlement | FRG: Yes | EU: disputed |
| 6. Non-state conciliation com. | FRG: Yes | EU: Yes |





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Thank you!

