



MOU: Binding or Non-Binding?

By **Amanda Pang** on Mar 18, 2026

THE COMMON MISCONCEPTION

Memoranda of Understanding (MOUs) are commonly used at the early stage of a business relationship to outline the framework of a potential collaboration – before a joint venture, partnership, or any definitive agreement is finalized.

Most companies understand an MOU as a “**non-binding**” document. In other words, it records intentions rather than creating strict legal obligations.

MOUs allow parties to explore a possible collaboration **without committing too early**, while key commercial terms are still evolving.

But in practice, the position is more nuanced.

THE IRONY INSIDE MANY MOUS

MOUs are often treated as non-binding. Yet many still contain clauses that only make sense if they are binding.

It is common to see provisions such as:

- governing law clauses
- confidentiality provisions
- exclusivity clauses
- dispute resolution provisions

But clauses like these only matter if they are meant to be enforceable.

Take a **confidentiality clause** as an example. Its purpose is to prevent parties from disclosing sensitive information shared during negotiations. But if the clause itself is non-binding, there would technically be no legal consequence if the information is disclosed.

A similar issue arises with a **governing law clause**. If the MOU creates no binding obligations at all, specifying that Malaysian law governs the document becomes largely symbolic. After all, there would be no enforceable obligations for a court to decide on in the first place.

This explains why many MOUs are, in reality, **partially binding**. The main commercial arrangement may remain non-binding, while certain provisions – such as confidentiality or exclusivity – are intended to be legally enforceable.

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CALLING IT AN “MOU” DOES NOT ALWAYS MAKE IT NON-BINDING

Another point businesses sometimes overlook is that **the title of a document does not determine its legal effect.**

Courts generally consider the substance of the arrangement and the conduct of the parties. If the terms are sufficiently clear and the parties act on them, a binding agreement may still arise.

Even where an MOU is expressed to be non-binding, the document may still matter if a dispute arises.

An MOU may show:

- what the parties were discussing
- what intentions existed at the time
- the commercial framework being considered

In that sense, an MOU may not be the contract – but it can still become part of the story behind the dispute.

A PRACTICAL TAKEAWAY FOR BUSINESSES

When signing an MOU, the common issue is not whether parties ask “Is this binding?” – but that question is often not considered at all.

A useful starting point is to ask:

“What is this document meant to achieve?”

If the intention is simply to record discussions without any legal protections, the document should clearly reflect that. But if certain protections – such as confidentiality or exclusivity – are expected, those clauses must be drafted accordingly.

Otherwise, the document risks becoming a legal paradox: provisions that appear protective, but carry no real consequence.

CONCLUSION

MOUs are often treated as informal documents signed at the early stage of business discussions.

Yet even documents meant to record “intentions only” can have real consequences.

It may not always be binding – but it can still shape the outcome.

This article is intended for general information purposes and may be subject to change. It should not be regarded as legal professional advice. If you have any queries relating to memoranda of understanding, contractual intent, or the legal effect of pre-contractual documents, please feel free to contact us (apy@apylaw.com.my).

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