# Procedures

Memorandum of Understanding

A Memorandum of Understanding (MoU) is a formal agreement, recording consensus on a particular issue between two or more parties, companies or organisations.

An MoU can be used in several different contexts such as for business, divorces, familial relations, companies, government organisations and international bodies.

MoUs are not legally binding but carry a degree of seriousness and mutual respect. They are considered as a "letter of intent". Therefore, while an MoU may be taken into consideration to determine the intent of the parties in a court of law, there is no legal remedy in case there is a breach of an MoU.
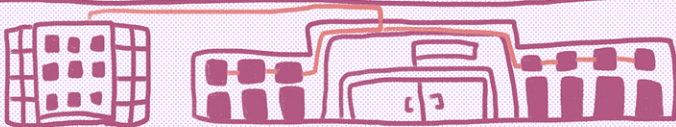
Enforceability
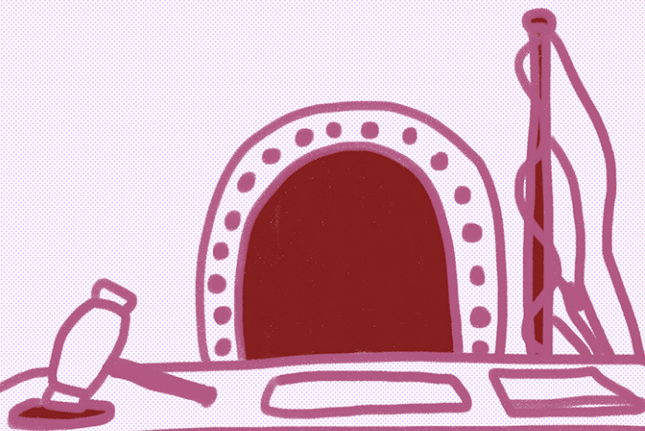
While generally MoUs are not legally enforceable, courts in India have held that it will be a matter of fact of each case and if a MoU satisfies all ingredients of a contract, it could be legally enforceable.

Use

MoUs are used between individuals, companies, organisations and in government agencies.

Many companies and government agencies use MoUs to define a relationship between departments, agencies or closely held companies.

In international agreements, MoUs fall under the broad category of treaties or covenants. Legally, the title of an MoU does not necessarily mean the document is binding or not binding under international law and this will depend on the intention conveyed.

Key Ingredients

MOUs should have the following clearly stated clauses that accurately reflect what the parties are intending to do:

Parties: These are the personalities or organisations that will be involved in the agreement, and is not restricted to a certain number of persons/organisations as long as all parties agree on the overall intent of the MOU.

Period: It is important to specify a time period of the relationship with start and end dates as MoUs cannot be everlasting.

Financial Arrangements: Where financial implications are involved in the overall intent of an MOU, these should be spelled out in detail including which entity will pay for each item and when payment is due and to whom.

Signatures: A representative from each partner with authority to bind their organisations contractually should sign the MOU.

Best Practices

Every contract or agreement should be carefully drafted keeping in mind the intent of the parties. The clauses may be standard but facts may vary in each case.

Each party should start with a planning phase where it decides what is wanted or desired, what can be offered and what is willing to be negotiated.

An initial draft should be written, after which representatives from each party meet to discuss the details. MOUs often list communication expectations to help mediate between both sides.

During this time, agreements regarding the timeline for when the MoU takes effect should be discussed. Agreements outlining how or when a party can terminate the understanding should also be decided. This is when a party puts in disclaimers, restrictions or privacy statements, as desired.

In order to ensure enforceability, include a dispute resolution clause (and ensure that it fulfills other criteria of a valid contract)

1) What is the purpose of an MOU?

A)It is a non-binding agreement between two or more parties outlining the terms and details of an understanding including each parties requirements and responsibilities. It can serve as the first stage in the formation of formal contract.

2) Does an MoU need to be registered?

A)An MoU is not a document that requires registration under the Indian Registration Act, 1908.

3) What are the six essential elements of a contract?

A)An MoU can become enforceable if it contains all the ingredients of a valid contract. As per Section 10 of the Indian Contracts Act, 1872 the essentials of a contract are:

- Free consent

- Parties competent to contract (Of majority age and sound mind)

- Lawful consideration (The amount to be paid)

- Lawful object (The purpose of the contract)

- Not expressly declared void

- Be registered if registration laws require them to be so