



Canada-Indonesia Trade and Private Sector Assistance Project (TPSA)

MoU Negotiation & Drafting Training

Presented on May 26-27, 2016

Presented by Bahar & Partners





Day 1

26 May 2016





List of Topics

1. Introduction to Negotiation and MoU

2. MoU Examples and Applicability

3. MoU Negotiation

4. MoU Drafting



Introduction to Negotiation and MoU

What is a negotiation?

- A dialogue between two or more people or parties intended to reach a beneficial outcome
- A process of settling differences, by which compromise or agreement is reached while avoiding argument and dispute
- A bargaining process between two or more parties (with its own aims, needs, and viewpoints) seeking to discover a common ground, reach an agreement, settle a matter of mutual concern, or resolve a conflict



Introduction to Negotiation and MoU

Why is a negotiation important?

- You will **understand** your partner's viewpoints and needs
- You will **address** each other's situation and how to settle a matter
- You will set goals and how to achieve those goals **together**
- You will come to an **agreement** between parties
- Win-win **solution** for all parties



Introduction to Negotiation and MoU

What is an MoU?

- MoU in Bahasa is *Nota Kesepahaman* or *Nota Kesepakatan*
- MoU is grammatically derived from:
 - a. Memorandum – is a brief written statement outlining the terms of agreement or transaction
 - b. Understanding – is an implied agreement resulting from the express terms of another agreement, whether written or oral; or a valid contract engagement of a somewhat informal character; or a loose and ambiguous terms, unless it is accompanied by some expression that it is constituted a meeting of the minds of parties upon something respecting which they intended to be bound.



Introduction to Negotiation and MoU

What is an MoU?

According to	Description
Legislative Research Bureau's	MoU is a written statement detailing the preliminary understanding of parties who plan to enter into a contract or agreement; a noncommittal writing preliminary to a contract. It is not meant to be binding and does not hinder the parties from bargaining with a third party. It means a commitment has been made.
Munir Fuady	MoU is a preliminary agreement which requires another specific and detail agreement to stipulate its content further, since MoU will only cover general provisions.
Erman Radjagukguk	MoU is a document containing understanding from both parties and MoU is intended to take both parties to the next binding contract.



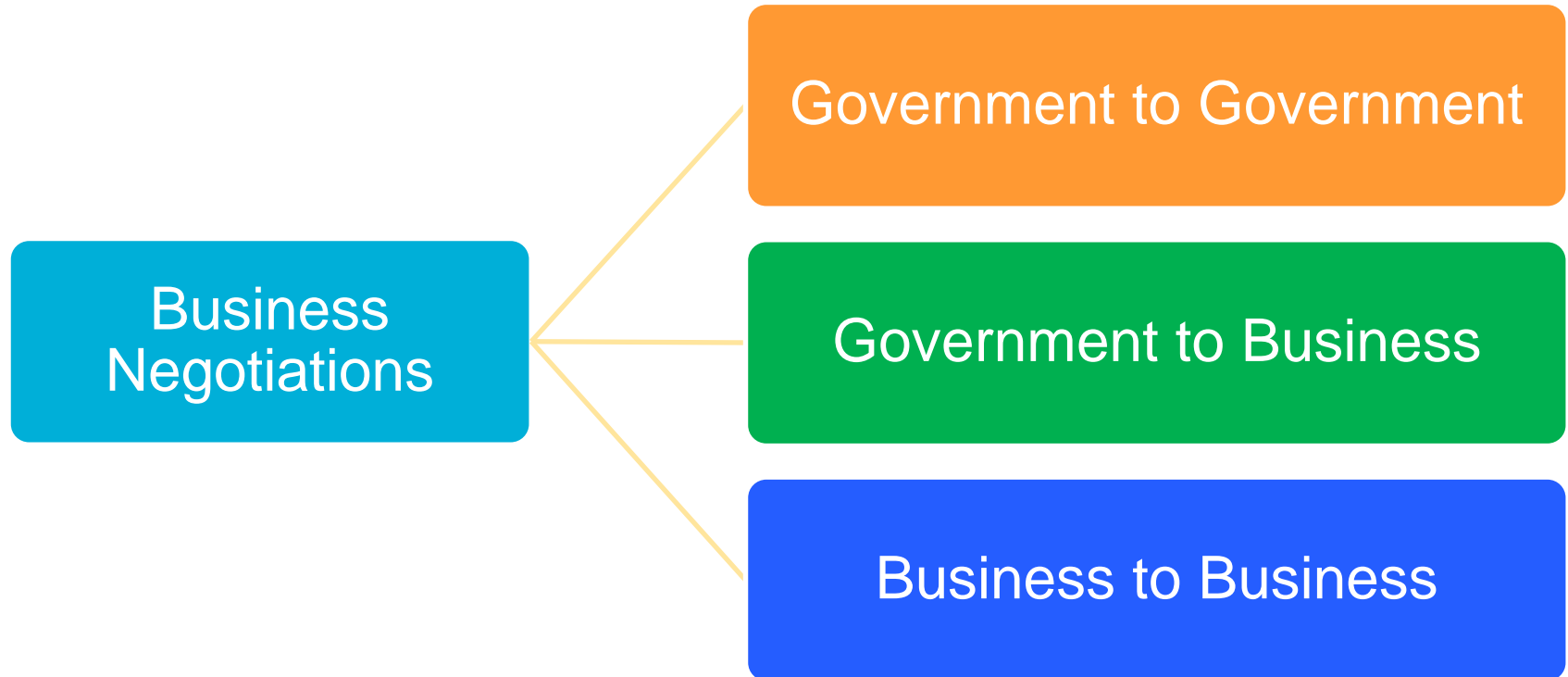
Introduction to Negotiation and MoU

Why is an MoU important?

- MoU is used at the **pre-contractual** stages and specifically done after first negotiation to achieve a meeting of mind or understanding
- MoU is a **basis to negotiate** for the following contract
- MoU serves as an **intention** to establish a legal relation in the future
- MoU **clarifies the interpretations** of certain regulations
- MoU **builds a working relationship** by setting a commitment for each other



Introduction to Negotiation and MoU





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MoU Examples & Applicability

Please see the MoU examples as distributed.



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MoU Negotiation

Take the lead

Manage conflict

Get to yes



MoU Negotiation

Elements of Negotiation

Process

Commitments

Communication

Relationship

Substance

Interests

Options

Standards

Alternatives



MoU Negotiation

1. Before you get in the room

The best negotiator is the most prepared one

- a) Develop assumptions with empowering expectations
- b) Prepare the substance (term sheet)– *understand interests, brainstorm options, research standards, and consider alternatives*
- c) Prepare the process – *plan how you will work and communicate with the other party*
- d) Connect in advance – *agree on the process and who's involved*



MoU Negotiation

2. In the room

Power comes from negotiating with discipline

- a) Begin the negotiation – *establish how you will work together*
- b) Create and refine your options – *be effective and efficient*
- c) Select the right outcome – *focus on the workable solution and commit*
- d) Continuously adapt your approach – *be prepared to change course*



MoU Negotiation

3. The challenges

Power comes from negotiating with discipline

- a) Align multiple parties – *avoid inefficiency and chaos*
- b) Tame the hard bargainer – *shift the conversation to a more neutral one*
- c) When communication breaks down – *build understanding*
- d) When emotions get in the way – *do not rush, take time to cool down*



MoU Negotiation

4. Post-negotiation

Careful review drives learning and improvement

- a) Wrap up the negotiation – *know when you're done, and communicate the final decision*
- b) Review what happened – *use “lessons learned” today for improvement tomorrow, do not forget to make minutes of meeting*

Follow up

- a) Keeping the momentum
- b) Maintain communication
- c) Make action plan to reach definitive agreement and implementation



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MoU Drafting

1. Title

- Both parties shall determine the title, demonstrating information regarding the identity of related parties, types of MoU, whether it is national or international, and the parties intention.
- Structurally, title contains entity of both parties, number, year, location and shall be capitalized and located in the middle.
- Logo of first party placed in the left side and the other party deserves the right side.



MoU Drafting

2. Opening

Consists of:

- a. Date, month, year and signing location of MoU;
- b. Position or authority of both parties, which describes the authority to act on behalf of the represented entity. Parties can be a person or legal entity.
- c. Consideration containing brief description, such as background and reason of MoU establishment.



MoU Drafting

3. Substance

- Each party has the authority to clarify their intentions and goals, and to conclude what should be stipulated within
- The basic substance of an MoU should cover:
 - a. Goals/Purposes
 - b. Scope and Coverage
 - c. Implementation
 - d. Boiler plate (confidentiality, amendments, counterparts, dispute settlement, notices)
- The optional substance of an MoU:
 - a. Period/Timing
 - b. Financial Arrangement Matters
 - c. Exclusivity
 - d. IPR



MoU Drafting

4. Closing

- Contains summary of the MoU and acknowledgment of understanding from parties

5. Signature

- Signature has an important role to formally seal acknowledgment of understanding from parties



Day 2

27 May 2016





List of Topics

1. Case Study

2. Group Discussion 1

3. Group Discussion 2

4. Summary and Closing Remarks



Case Study

1. Divide into 3 (three) groups consisting of:
 - a) Country X Government
 - b) X Company
 - c) Y Company
2. Read the case study carefully and act based on your role
3. Point 2 (two) negotiators for your group
4. Only discuss within your group members



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1. Case Study

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Group Discussion 1

X Company and Y Company



List of Topics

1. Case Study

2. Group Discussion 1

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Group Discussion 2

X Company and Country X Government

Final negotiation and MoU drafting between parties



List of Topics

1. Case Study

2. Group Discussion 1

3. Group Discussion 2

4. Summary and Closing Remarks



Summary and Closing Remarks

1. Before you negotiate, prepare yourself well by studying your situation, options, assumptions, and arising dispute. Understand why you want to negotiate and what goal(s) do you want to achieve.
2. Negotiation can only be done if you communicate clearly and openly to your counterpart(s), and try to find a solution that will work for all parties. The point of negotiation is to get what we want together (win-win solution).
3. MoU drafting should be understandable and workable to all parties.



Thank You
Terima Kasih

