



ATTORNEY
GENERAL'S
CHAMBERS

BRUNEI DARUSSALAM

Treaties and Memorandum of Understanding: *Current Trends and Practices*

Fauziah Sulaiman

Deputy Senior Counsel

fauziah.sulaiman@agc.gov.bn

Outline

- Memorandum of Understanding
- Common provisions
- Drafting an MOU
- Checklist



Nature of Memorandum of Understanding (*MOU*)

- Between 2 or more parties
- Records international commitments
- Not legally binding*

SKELETAL MOU

- Preamble
- Body
- Testimonium
- Signature Block

Drafting Terminology

Treaties (Legally Binding)	MOUs (Non-Legally Binding*)
<i>Article</i>	<i>Paragraph</i>
<i>Have agreed as follows</i>	<i>Have reached the understanding</i>
<i>Shall</i>	<i>May/ Will</i>
<i>Agree</i>	<i>Accept/Approve</i>
<i>Done</i>	<i>Signed</i>
<i>Enter into force</i>	<i>Come into effect</i>

TITLE OF MOU

- Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam
- Government of Brunei Darussalam

Example:

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE GOVERNMENT OF HIS MAJESTY THE SULTAN
AND YANG DI-PERTUAN OF BRUNEI DARUSSALAM
AND
THE GOVERNMENT OF MALAYSIA
ON COOPERATION IN THE FIELDS OF YOUTH AND
SPORTS**

**BODY -
Common
Provisions**

Objective	Protection of Intellectual Property Rights
Areas/Scope of Cooperation	Suspension
Implementation	Dispute Settlement
Financial Arrangements	Revision, Modification and Amendment
Confidentiality	Effective Date, Duration and Termination
Effect/Nature of MOU	

PREAMBLE

- Sets the background, context and purpose of the MOU
- Political statement
- Preambular provisions are CAPITALISED and formatted in BOLD e.g. **RECALLING, ACKNOWLEDGING**
- The last preambular paragraph ends with **HAVE REACHED THE UNDERSTANDING**

Example: *Preamble*

- The Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam, represented by the Ministry of Foreign Affairs and Trade and the Government of _____, represented by the Ministry of Foreign Affairs (hereinafter referred to individually as the “Participant” or collectively as the “Participants”);
- **DESIRING** to promote the development of relations of friendship and cooperation between the two countries;
- **CONVINCED** that a sincere and constructive dialogue on all aspects of bilateral relations, as well as on regional and international issues will contribute to the enhancement of their bilateral cooperation;
-
- **HAVE REACHED** the following understanding:

OBJECTIVE

- Sets out the purpose of the MOU.
- *The Participants, subject to the provisions of this Memorandum of Understanding and the laws, rules, procedures, regulations and national policies for the time being in force in their respective countries, will encourage and promote mutual co-operation in fields of youth and sports on the basis of equality and mutual benefit.*

Areas/Scope of Cooperation

- Where the identified areas of cooperation are specified
- What if it's a non-exhaustive list or there are some areas you can't envisage now?

Example:
*Areas/Scope
of
Cooperation*

Each Participant will, subject to the laws, rules, regulations and national policies from time to time in force, governing the subject matter in their respective countries, endeavor to take necessary steps to encourage and promote co-operation in the fields of tourism in the following areas:

- research and development;
- education and training;
- promotional and publicity events;
- meetings, conventions and travel marts/trade fairs; and
- **any other areas of cooperation in the field of tourism to be mutually agreed upon by the Participants.**

Implementation

- Monitoring the implementation of the MOU
- Establishment of Working Group/Joint Committee
- Identifies a focal point with details
- Level of representation
- Frequency of meetings

Example: *Implementation*

The Participants will determine the practical details of cooperation between them to ensure proper and effective **implementation** of this Memorandum of Understanding **subject to the laws, regulations, rules and national policies of the respective Participants**. For this purpose the Participants will consult each other through their **designated authorities**.

The Participants may enter into supplemental agreements and arrangements for the purpose of implementing this Memorandum of Understanding.

Designated Authorities

- Monitoring the implementation of the MOU
- Establishment of Working Group/Joint Committee
- Identifies a focal point with details
- Level of representation
- Frequency of meetings

Example:
*Designated
Authorities*

The designated authorities and the contact details of the Participants responsible for the implementation of this Memorandum of Understanding are as follows:

BRUNEI DARUSSALAM

Ministry of Primary Resources and Tourism
Jalan Menteri Besar,
Bandar Seri Begawan BB3910,
BRUNEI DARUSSALAM

MALAYSIA

Ministry of Tourism and Culture
No. 2, Menara 1, Jalan
Presint 5, Pusat Pentadbiran Kerajaan Persekutuan
62200 PUTRAJAYA, MALAYSIA

Financial Arrangements

- Acknowledges that there will be costs arising from implementation of MOU
- Who bears costs?

Example: *Financial Arrangements*

The financial arrangements to cover the expenses for the **co-operative activities** undertaken within the framework of this Memorandum of Understanding will be **mutually decided** upon by the respective Participants on a **case by case basis** **subject to the availability of funds**.

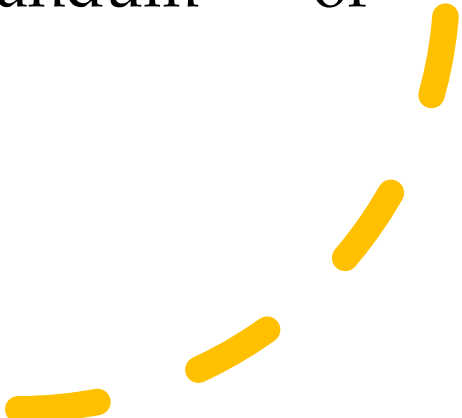
Notwithstanding anything in paragraph 1 above, expenses for organizing the meetings of the Committee will be borne by the Participant hosting the meetings. The Participant which is sending its representatives for participation in the meetings, if any, will bear their own travel and living expenses.

Confidentiality (Safeguard provisions*)

- To ensure that any information exchanged remains confidential

Example: *Confidentiality*

The Participants **shall** maintain the confidentiality of information and documents exchanged pursuant to this Memorandum of Understanding, and **shall** not disclose such information or documents received to any third party without the **prior written consent** of the other Participant. The provisions of this paragraph **shall** continue to apply **even after the termination** of this Memorandum of Understanding.



Protection of Intellectual Property Rights

- To ensure that the intellectual property of each Party are protected.
- Its inclusion depends on the nature of the cooperation under the MOU.

Example: *Protection of IPR*

1. The protection of intellectual property rights shall be enforced **in conformity with the respective national laws, rules and regulations** of the Participants and **with other international agreements** to which the Participants are party to.
2. The use of the name, logo and/or official emblem of either Participant on any publication, document and/or paper is prohibited without the **prior written approval** of that Participant concerned.
3. Notwithstanding anything in sub-paragraph 1 above, the intellectual property rights in respect of any technological development, and any product and services development, carried out:
 - i. jointly by the Participants or research results obtained through the joint activity effort of the Participants, shall be jointly owned by the Participants in accordance with the terms to be mutually agreed upon; and
 - ii. solely and separately by the Participant or the research results obtained through the sole and separate effort of the Participant shall be solely owned by the Participant concerned

Effect of Memorandum of Understanding

- To expressly state that the MOU is non-legally binding.
- May also include exemptions to this effect, which makes certain provisions of the MOU as legally binding
 - Such as Confidentiality and Dispute Settlement

Example: *Effect of MOU*

Except for the provisions in **Paragraph 6 (Confidentiality)***, this Memorandum of Understanding **does not** give rise to legally binding rights or obligations under international law, and the cooperation and exchanges under this Memorandum will be conducted subject to the laws and regulations of the respective countries.



Suspension (Safeguard provision)

- To set out the reasons/circumstances in which the MOU can be suspended



Example: *Suspension*

Each Participant reserves the right for **reasons** of national security, national interest, public order or public health to suspend temporarily, either in whole or in part, the implementation of this Memorandum of Understanding.

Such suspension shall take effect **immediately after notification has been given** to the other Participant through **direct contact channels**.



Dispute Settlement Mechanism

- Sets out the way disputes are resolved.
- Reflects the non-legally binding nature of the MOU.

Example: *Settlement of Disputes*

Any difference or dispute between the Participants concerning the interpretation and/or implementation and/or application of any of the provisions of the Memorandum of Understanding shall be settled amicably through mutual consultation and/or negotiations between the Participants through diplomatic channels, without reference to any third party or international tribunal.

In the event of disputes in relating to **Paragraph 6 (Confidentiality)**, the Participants may agree to refer such disputes to their agreed third party or international tribunal.

Revision, Modification and Amendment

- Provides for how the MOU can be revised/modified/amended and when it comes into effect.

Example:
*Revision,
Modification and
Amendment*

Either Participant may **request in writing** a revision, modification or amendment of all or any part of this Memorandum of Understanding.

Any revision, modification or amendment agreed to by the Participants will be **reduced into writing and will form part** of this Memorandum of Understanding.

Such revision, modification or amendment will **come into effect** on such **date as may be determined** by the Participants.

Any revision, modification or amendment will not prejudice the rights and obligations arising from or based on this Memorandum of Understanding prior or up to the date of such revision, modification or amendment.

Effective Date, Duration and Termination

- Effective Date
 - States the manner in which the MOU comes into effect
- Duration
 - Validity of MOU
 - Means of renewal/extension
- Termination
 - Means of terminating the MOU

Example:
*Effective Date,
Duration and
Termination*

This Memorandum of Understanding will **come into effect on the date of signing** and will **remain in effect for a period of three (3) years**.

This Memorandum of Understanding will **automatically be renewed for successive periods of three (3) years** unless terminated by either Participant, with six (6) months advance written notice.

This Memorandum of Understanding may be terminated by either Participant giving six (6) months advance written notice to the other Participant.

In the event of such termination, all commitments, ongoing projects and/ or activities made under this Memorandum of Understanding will remain valid and effective until the completion of such agreed commitments, ongoing projects and/or activities, unless the Participants agree otherwise.

Cont'd
Example:
*Effective Date,
Duration and
Termination*

- This Memorandum of Understanding will **come into effect on the date of signature** and **will remain in effect** unless terminated by either Participant giving **six months advance written notice** to the other Participant of its intention to terminate this Memorandum of Understanding.
- This Memorandum of Understanding will **come into effect on the day of its signature** and **will remain in effect until 31 December 2023**.
 - This Memorandum of Understanding may be terminated by either of the Participants by giving written notice to the other Participant, through diplomatic channels, **at least six (6) months prior to the intended date of termination**.

TESTIMONIUM

SIGNED at

.....

..... on the day of

..... in the year

..... in two (2) original copies
in the English and Romanian
languages, both texts being equally
authentic. In case of divergence of
interpretation, the English text will
prevail

Example:
Signature Block

For and on behalf of
the Government of His
Majesty the Sultan and
Yang Di-Pertuan of
Brunei Darussalam

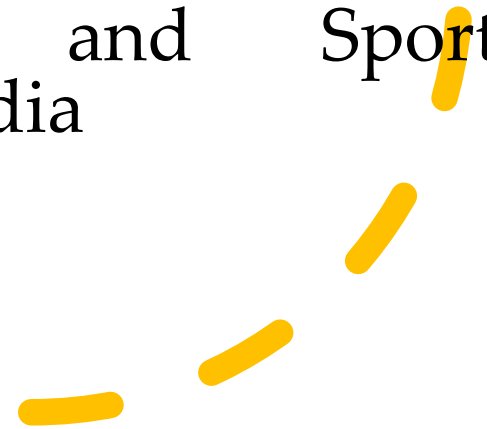
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Minister of Culture,
Youth and Sports
Brunei Darussalam

For and on behalf of
the Government of the
Kingdom of
Cambodia

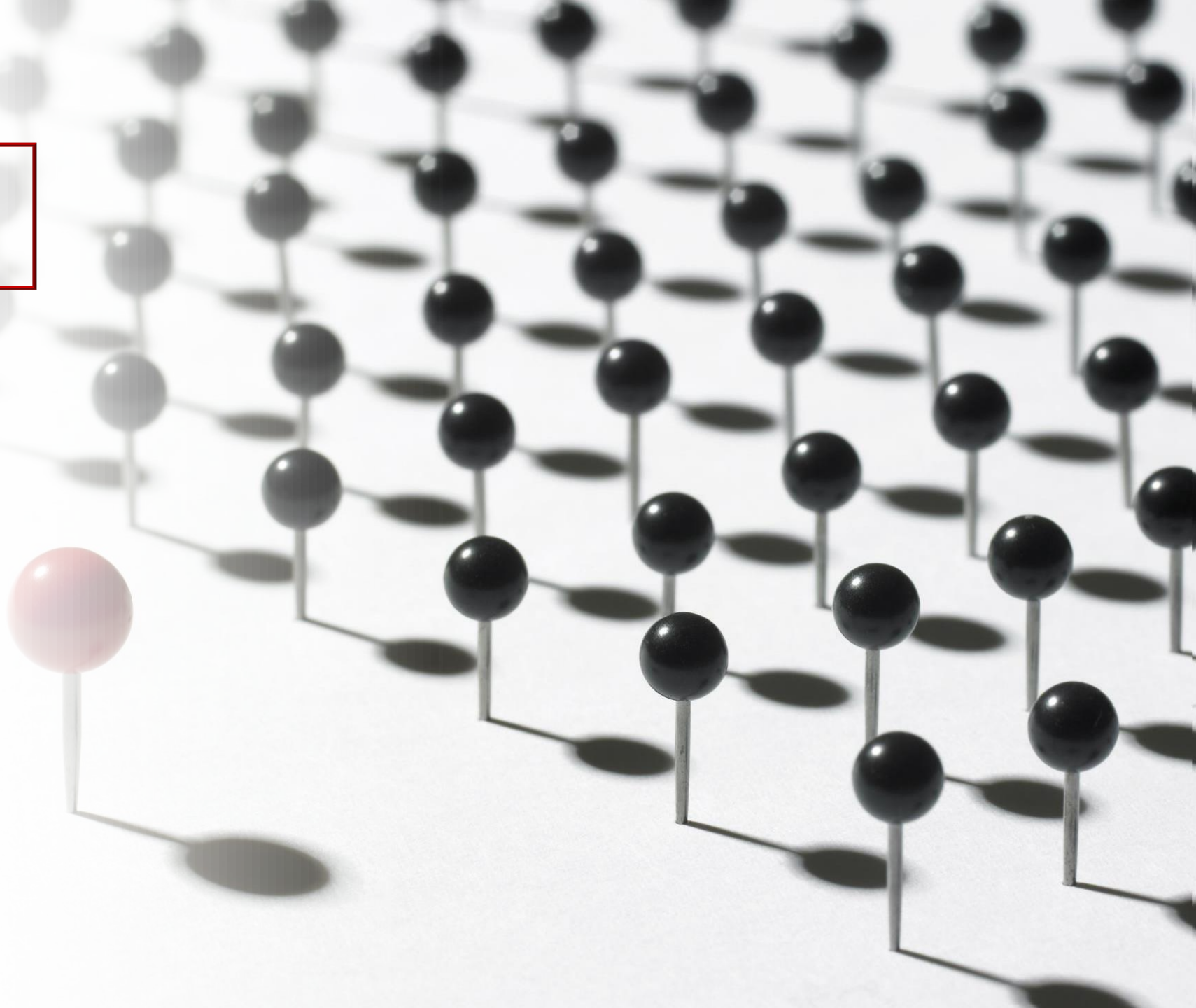
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Minister of Culture
Youth and Sport
Cambodia



Conclusion

Vienna
Convention on
the Law of
Treaties (VCLT)
does not apply
to MOUs.



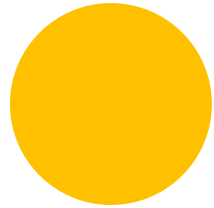
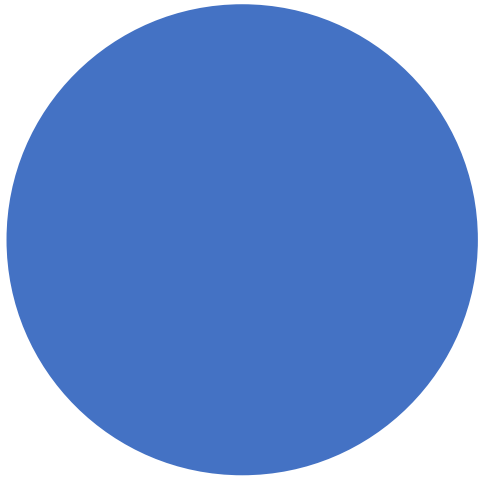
Checklist

- Background Information
- Intention or proposal of cooperation
- Who prepared the draft?
- Commitments are consistent with policy
- Name and contact details of officer
- Provide Word document copy of MOU
- Preliminary comments on draft MOU
- Provide signed copy to AGC



**ANY
QUESTIONS?**

international.affairs@agc.gov.bn



**Thank you for your
attention**

international.affairs@agc.gov.bn