

## LETTERS OF INTENT AND WHAT THEY ACHIEVE

### *Hey What Happened? Didn't We Sign the Memorandum of Understanding?*

After months of due diligence and hard negotiation, you finally “ink” a deal with your business partner. You are sipping a nice cup of latte at your favourite café contemplating the new BMW you are finally going to be able to afford now that your business has taken off when you receive an email on your Blackberry informing you that the deal is off. Your vision of that nice BMW is sadly vaporising faster than the coffee cooling on your cup.

Your first thought is “How can they do that? We have signed the memorandum of understanding!” You have obeyed the cardinal rule of “Getting It In Writing” and you assumed that the deal is sealed. Can you still be left high and dry by the dishonorable renegeing party with no legal recourse?

Very often in the business world, legalistic sounding papers like “memorandum of understanding” (or “MOU”) and “letter of intent” are bandied about. It is always assumed that a document made precursory to a contract would be legally binding and you would be entitled to legal remedies if the other party reneges on the deal.

So what exactly is a “Letter of Intent” and what does it achieve?

A “letter of intent” is also commonly known as a “memorandum of understanding”; a “term sheet” or a “discussion paper”. Simply put, a letter of intent is a document that outlines the general plans of the parties in a business deal before a formal business agreement is drawn up by lawyers for signing. Although a letter of intent is a document in writing, it is merely a more formal form of a “gentlemen’s agreement”. Take note that it does NOT create a legally enforceable agreement between the parties.

A letter of intent does share some resemblance to a written contract. However the main difference between a letter of intent and a contract is that the letter of intent is usually not intended to be binding on the parties in its entirety. At most, it will contain legally binding provisions limited to non-disclosure, confidentiality and exclusive rights to negotiate.

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The common uses of a letter of intent are:

1. to set out the general intent of the parties;
2. to set out the key points of a complex transaction;
3. to provide safeguards in case the business deal collapses during negotiations;
4. to provide tangible proof of the business deal to potential investors.

So what must a letter of intent contain?

There is no hard and fast rule as to what should be addressed in a letter of intent. As a general guideline, a letter of intent will include following information:

1. the general intention of the parties;
2. an overview of the business transaction;
3. the key points of a complex transaction (eg. price, quality and deadlines);
4. safeguards in case negotiations fail (eg. confidentiality, non-disclosure and good faith).

For example, if a larger corporation intends to buy out a smaller company, the letter of intent might contain the price of the buy-out and a specific date for the proposed take-over. In the case of a joint venture, the letter of intent would contain provisions setting out an outline of the business venture; briefly the rights and obligations of the parties and the legal structure of the joint venture.

Beyond business undertakings, letters of intent are commonly used in the real estate industry where prospective tenants set out the terms under which they are prepared to take a lease of the premises.

## **What We Do**

**Business Law** – We advise businesses in all stages of its life cycle - from start-up and growing it through acquisitions and restructures; to retiring from the business by selling or handing it over to the next generation. Your business too will face different funding, organizational and legal challenges as it goes through different stages of its life cycle.

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We provide frank, insightful analysis and practical solutions.

We don't believe in doing anything less.

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