



Win-Win Negotiating: TPSA Project Holds a Workshop on Drafting and Negotiating MoUs for Export Development

A memorandum of understanding (MoU) is an invaluable document that can help avoid misunderstandings by outlining the business interests, expectations, current and future responsibilities, and implementation schedule agreed to by the parties. While not legally binding, an MoU sets the framework for parties to achieve shared goals and work toward a more formal contract.

Indonesia has taken steps to improve its business and trade environment. Building and strengthening the capacity of Indonesian officials in the area of international trade facilitation is of crucial importance and will go a long way toward helping Indonesia achieve its goal of increasing exports.



Participants at the workshop.

“With this training, my team and I now have a more complete picture about how to formulate an MoU. I am more confident in conveying the interests of my party and know how important it is to understand the common ground and mutual interest of all parties prior to the drafting process. This way we can avoid unnecessary misunderstandings in preparing MoUs.”

—RUTH JOANNA SAMARIA TURNIP
Trade Analyst, Directorate General for National Export Development, Indonesia Ministry of Trade

on drafting and negotiating MoUs in the area of international trade. In response, a two-day workshop was held in Jakarta on May 26–27, 2016. Indonesian law firm Bahar & Partners conducted and facilitated the workshop.

The primary objective of the workshop was to provide Indonesian government officials—especially those involved in trade negotiation and MoU drafting—with the necessary knowledge and skills to draft and negotiate MoUs between government and other governments or private sector organizations.

The Directorate General of National Export Development (DGNED) requested the Canada-Indonesia Trade and Private Sector Assistance (TPSA) project to provide training and guidelines





Understanding an MoU

An MoU is a document that outlines the mutual agreement between two or more parties on a particular issue. An MoU is used at the pre-contract stage and is usually drafted after two or more parties first come together to negotiate—it signals that the parties have achieved some level of mutual understanding. It is a basis on which to negotiate a contract and it serves as an intention to establish a legal relationship in the future. An MoU also builds a working relationship by setting a commitment between or among the parties.

An MoU may be drawn up between a government and another government (G to G), between a business and another business (B to B), or between a government and a business (G to B).

Bahar & Partners provided samples of different types of MoUs and also produced a guideline document to be used by government officials.

Drafting an MoU

Before negotiating with a counterpart to draft an MoU, you must be prepared and clear about your internal objective. A helpful way to identify your objective is to ask yourself the following five W questions (what, why, who, where, and when) and one H question (how).

What?

- What do you want to achieve (goal, purpose, or objective)?
- What kind of cooperation would you like to have with your counterpart?
- What could you offer to your counterpart and what do you expect in return?

Why?

- Why would you cooperate with a particular counterpart? Are there other suitable counterparts you should consider?

Who?

- Who is your counterpart? It is important to conduct a thorough background check to ensure that the counterpart's practices are in line with your objective.
- Who will be on your team? It is most efficient and effective if the same team members are on the project from inception to completion.
- Who will support you and who will support your counterpart? Knowing the associations, private sector organizations, or government departments that will support your project is critical.

Where?

- Where would you like your project to have an impact?
- Where will the project have an impact on your counterpart's market?

When?

- When would you like the project to start?
- Is there any time limit for your project?

How?

- How are you and your counterpart going to make this project happen (implementation)?
- How are you dealing with your counterpart on certain issues?
- How are you going to arrange other aspects, such as financing, regulation, and market access?

An MoU should be well-written, clear, and unambiguous. While the contents of an MoU may vary depending on the specific situation, the general contents used worldwide are:

1. title
2. opening paragraph
3. substance
4. confidentiality
5. amendments
6. counterparts
7. dispute settlements
8. channel of communication and notices



Participating in workshop activities.



Greg Elms, TPSA Field Director, co-facilitating the negotiation exercise to produce beneficial outcomes.

- 9. period/timing
- 10. financial arrangements
- 11. exclusivity
- 12. intellectual property rights (IPR)
- 13. action plan/work program

Negotiating an MoU

Negotiation is a dialogue between two (or more) parties aiming to reach a favourable outcome. Negotiation is also a bargaining process with its own aims, needs, and viewpoints. A negotiation seeks to discover a common ground, reach an agreement, settle a matter of mutual concern, or resolve a conflict.

Negotiation is important as it enables you to understand your counterpart's viewpoints and needs, address each other's situations, understand how to settle a disagreement, set goals and outline a process on how to achieve those goals together, come to an agreement between parties, and come to a win-win solution for all parties.

In practice, the negotiation process is generally divided into three stages:

1. Before you get in the room to start the negotiation:
 - Before you start the negotiation, make sure you are well-prepared. Conduct research and a background check on your counterpart.
2. When you are in the room and starting the negotiation (including the challenges).
 - Negotiation should be a process where you build a good working relationship with your counterpart. It is crucial to be able to draw out your interests and identify theirs.

3. When you are out of the room (post-negotiation).
 - When the negotiation comes to an end, wrap up the negotiation effectively by communicating and stating the final decision on the matters that have been discussed and agreed to by all parties.

“When you step into the negotiation room, you need to be prepared. The best negotiator is the most prepared one.”

—CYLVIE NURAINI
Partner, Bahar & Partners

Conclusions

The workshop was very successful and an effective step for the TPSA project to advance the skills of government officials in drafting and negotiating MoUs. The activities and sample MoUs were customized according to the needs of the Ministry of Trade, and the workshop was enhanced by the active engagement of all participants.

All participants reported that their skills and knowledge had improved as a result of attending the workshop, and most reported that their new level of skills and confidence in applying the knowledge ranged from very good to excellent.

The participants reported high overall satisfaction with the workshop. The overall satisfaction rating was 5 per cent fair, 35 per cent good, 30 per cent very good, and 30 per cent excellent.

About the TPSA Project

TPSA is a five-year C\$12-million project funded by the Government of Canada through Global Affairs Canada. The project is executed by The Conference Board of Canada, and the primary implementation partner is the Directorate General for National Export Development, Ministry of Trade.

TPSA is designed to provide training, research, and technical assistance to Indonesian government agencies, the private sector—particularly small and medium-sized enterprises (SMEs)—academics, and civil society organizations on trade-related information, trade policy analysis,



Celebrating the successful conclusion of the Drafting and Negotiating MoUs for Export Development workshop.

regulatory reforms, and trade and investment promotion by Canadian, Indonesian, and other experts from public and private organizations.

The overall objective of TPSA is to support higher sustainable economic growth and reduce poverty in Indonesia through increased trade and trade-enabling investment between Indonesia and Canada. TPSA is intended to increase sustainable and gender-responsive trade and investment opportunities, particularly for Indonesian SMEs, and to increase the use of trade and investment analysis by Indonesian stakeholders for expanded trade and investment partnerships between Indonesia and Canada.

The expected immediate outcomes of TPSA are:

- improved trade and investment information flows between Indonesia and Canada, particularly for the private sector, SMEs, and women entrepreneurs, including trade-related environmental risks and opportunities;

- enhanced private sector business links between Indonesia and Canada, particularly for SMEs;
- strengthened analytical skills and knowledge of Indonesian stakeholders on how to increase trade and investment between Indonesia and Canada;
- improved understanding of regulatory rules and best practices for trade and investment.

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