



## Legal Effect Of A Letter Of Offer: Binding Agreement Or Mere Proposal?

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A Letter of Offer (LO) often bridges informal agreement and formal contract, particularly in property, procurement and joint ventures. While businesses may treat it as a deal's conclusion, its legal force is not automatic; it depends on intention and valid acceptance.

This certainly masks a grey area. A signed LO is frequently mistaken for a binding contract, yet it may amount only to a preliminary framework, raising the question of whether it creates obligations or merely signals an intention to negotiate.

In law, a binding contract requires offer, acceptance, consideration and intent to create legal relations. An LO satisfies these only where acceptance is clear and unequivocal.

The position is rarely clear-cut. Recently in *Mutiara Orient Sdn Bhd v Penang Port Sdn Bhd* [2026] 1 AMR 473, the High Court found no contract had arisen: the LO was not accepted in line with its terms, lapsed and was validly revoked. The case underscores a fact-sensitive boundary between negotiation and obligation. An LO may remain non-binding if unaccepted but can crystallise into an enforceable contract upon proper acceptance.

### Background

The dispute arose from a development project concerning the Swettenham Pier Cruise Terminal in Penang. In April 2023, the defendant, Penang Port Sdn Bhd, a licensed port operator, invited selected companies to participate in a request for proposal (RFP) exercise for the lease, development, and operation of the "Penang Port Sdn Bhd former headquarters building, godown Nos. 2, 3, 4

and 6, ground transportation area, Penang Yacht Club building, external land and its surrounding area”.

The plaintiff, Mutiara Orient Sdn Bhd, submitted its proposal on 31 July 2023. After evaluating the submissions, the defendant issued a LO dated 20 January 2024 for a proposed sub-lease. The LO required the plaintiff to appoint a licensed surveyor, execute a formal sub-lease agreement, and signify acceptance by signing and returning the LO together with an initial rental payment of RM307,634.20 and deposits totalling RM769,085.40 by 29 February 2024.

Instead of accepting the LO unconditionally, the plaintiff proposed amendments, sought clarification regarding the defendant’s status as the leaseholder of the land, and requested an extension of time. Although the defendant rejected the proposed amendments, it granted a 14-day extension. The plaintiff nonetheless failed to sign the LO or make the required payments by that deadline. The defendant later formally revoked the LO in June 2024. The plaintiff then commenced proceedings, alleging that the LO was unlawfully revoked.

## Issue

The central issue was whether a binding contract had been formed between the parties.

## The High Court’s Ruling

The High Court held that no binding contract existed and accordingly dismissed the plaintiff’s claim. In particular, the Court made the following findings:

### The RFP as an Invitation to Treat

The RFP was not an offer capable of being accepted to form a contract. It was merely an *“invitation for interested bidders to submit their proposal for the defendant’s consideration”*. The Court noted that the defendant explicitly reserved the right to accept or reject any proposal without giving reasons, which is inconsistent with an intention to be immediately bound and indicates that it did not constitute a binding offer.

### The Failure of “Absolute and Unqualified” Acceptance

Under Section 7 of the Contracts Act 1950, for a proposal to become a promise, the acceptance must be absolute and unqualified. The Court found that the plaintiff failed to satisfy this requirement for the following reasons:

- (a) By proposing amendments to the LO, the plaintiff made a counter-offer, which in law operates as a rejection of the original offer, thereby extinguishing the LO as an offer capable of acceptance; and

- (b) The LO contained "conditions precedent" for acceptance, specifically, signing the document and making the initial rental and deposit payments. The Court held that since these acts were not performed by the deadline, no contract could possibly have been formed.

### Lapse and Lawful Revocation

The Court clarified that the LO lapsed upon expiry of the acceptance deadline pursuant to Section 6(b) of the Contracts Act 1950 and was therefore validly revoked. Consequently, there was no "contract" for the defendant to breach.

### When Is A Letter Of Offer Binding?

While *Mutiara Orient* illustrates that a LO can remain a non-binding "invitation to treat", judicial authority confirms that its legal effect is not dictated by its label alone. Instead, the Courts adopt a holistic approach, scrutinising the substance of the parties' conduct and the circumstances to determine whether the parties have crossed the threshold from preliminary negotiation to a binding contractual obligation.

A key distinction lies in the presence or absence of valid acceptance. In *Mutiara Orient*, the plaintiff did not accept the LO as it stood. Instead, it proposed amendments, which in law amounted to a counter-offer. As a result, the original offer was no longer capable of acceptance, and no binding contract was formed.

Similarly, in *Petron Malaysia Refining & Marketing Bhd v Magna Enigma Sdn Bhd* [2024] MLJU 1588, the High Court emphasised that the binding nature of a LO depends on whether the parties have reached consensus ad idem on essential terms, assessed objectively based on the parties' conduct and communications.

In contrast, a different outcome was reached in *Cipta Cermat Sdn Bhd v Perbandaran Kemajuan Negeri Kedah* [2007] 2 MLJ 746. In that case, the Court of Appeal held that a binding contract may arise notwithstanding the absence of a formal agreement, where there is clear offer, acceptance, consideration and certainty of terms, coupled with acts of part performance. Importantly, the plaintiff had demonstrated clear acceptance through acts of part performance, such as paying a deposit and additional sums. The Court emphasised that the mere expectation of a formal agreement did not prevent a concluded contract from arising.

Ultimately, these cases show that the legal effect of a LO is highly fact-sensitive and cannot be determined solely by its label. On one hand, *Mutiara Orient* and *Petron Malaysia* illustrate that a LO may remain a mere proposal where there is no acceptance or no consensus on essential terms. On the other hand, *Cipta Cermat* shows that a LO may become binding where there is clear acceptance, certainty of terms, and conduct indicating an intention to be bound. Additionally, in some instances, the parties may explicitly mention that the LO is non-binding.

A critical factor is whether the parties intended the LO to be immediately binding or merely a step towards a formal agreement. Courts will examine the language of the LO and the surrounding circumstances to determine such intention.

## Conclusion

The decision in *Mutiara Orient* reinforces the principle that a LO, without proper acceptance or clear intention to be bound, does not give rise to enforceable contractual rights. It makes clear that a LO is not a “done deal” simply because it has been issued. On its own, a LO does not create legal rights or obligations; its legal effect may only arise when it is accepted in accordance with its terms or through the conduct of the parties.

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