

Case analysis: Enforceability of MOUs in commercial transactions

25 April 2025  Andrew Woolsey and Molly Ahmed

Our recent High Court decision in [Cohen et al v \(1\) RiverRock European Capital Partners LLP & Anor \[2025\] EWHC 845 \(Comm\)](#) examines the enforceability of a Memorandum of Understanding (MOU) for repayment of the sum of €3,000,000 (plus contractual interest at 10 per cent), arising from a financing / equity investment transaction.

This case is a timely reminder that some parts of a written MOU may be legally binding (and others not) depending on the objective common intention of the parties.

Key facts

- The defendant investment firm, 'RiverRock', required urgent working capital, which the three claimants would provide in return for equity in RiverRock.
- The MOU was entered into so as to facilitate a cash injection into RiverRock. The sum of €3 million (the 'Advanced Payment') was advanced in instalments, based on the terms of the MOU, having been paid by two companies associated with two of the claimants, but before the completion of fuller documentation anticipated by the parties.
- However, no further documentation followed, and the claimants sought repayment of the Advanced Payment.
- The defendants contested the repayment, arguing primarily that the MOU's terms were too uncertain or materially inchoate (in the sense of being 'subject to contract') to be legally binding. On the other hand, they argued that the terms pursuant to which the Advanced Payment was made were legally binding and enforceable.
- Second, they argued that any repayment obligation imposed by the MOU ought to be in favour of the two companies that had remitted the Advanced Payment to RiverRock and those companies were not parties to the litigation. Finally, the defendants contended the third claimant was not entitled to claim under the MOU because his father had signed the MOU in his place.

The decision

- In granting the claimants' application for summary judgment, the court held that the repayment regime in the MOU was a self-contained code for the fate of the Advanced Payment, sufficiently certain and complete to constitute or contain a legally binding repayment obligation. The fact that the obligation was self-sufficient and obviously correlative to the obligation on the claimants to make the Advanced Payment was a powerful indicator against the repayment obligation being subject to contract. If the repayment regime was not legally binding, then what was its point?
- Even though the funds constituting the Advanced Payment were sent by separate companies, the claimants' contractual obligation to make the Advanced Payment had been fulfilled by them as a matter of contract and the concept of "repayment" in this context and the word itself as a matter of ordinary language meant what it said: repayment to the claimants.
- Finally, the third claimant was a party to the MOU through the agency of his father who signed on his behalf. The third claimant's father had not signed in his own capacity nor as principal and there was no reason to doubt that he had actual authority to sign on his son's behalf.

Concluding remarks

This case serves as a reminder of the legal weight that documents such as memoranda of understanding, letters of intent and heads of terms / agreement can carry in commercial transactions and the need for careful drafting.

Molly Ahmed and Andrew Woolsey acted for the successful claimants in this case. For legal assistance relating to disputes arising out of [corporate transactions](#), please contact us. You can also find out more about our [international dispute resolution practice here](#).

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