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✖ Startup DAYS

**Masterclass**  
**Term Sheets for Beginners**

September 25, 2018

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**Introduction**

**I. Term Sheet Basics**

**II. Main Issues**

**Conclusions**



## INTRODUCTION

1. Unbalanced Negotiations
2. No Limit (“High Stakes, No Prisoners”) ... until you set one
3. Market Practice and Standards
4. Key Terms Focus

► **GOLDEN RULE: BE PREPARED**



## I. TERM SHEET BASICS

### 1. Content

- Main Financing Terms: Key Figures and Clauses
- Parties' Intent
- Process (Timing / Confidentiality / Exclusivity / Costs)

### 2. Legal Nature

- Non Binding (with exceptions)
- Conditional Offer / Subject to Contract / Conditions Precedent
- Pre-Contractual Obligations (good faith negotiations)
- Practically “Binding”



## II. MAIN ISSUES (1/7)

### 1. Valuation

- Pre-Money / Post-Money / Fully Diluted
- Investment Amount / Staged Investment
- Key Element (but *only* one of many)
- Capitalization Table

### 2. Milestones

- Tranches
- Objective Criteria / Test
- Link to Business Plan



## II. MAIN ISSUES (2/7)

### 3. Classes of Shares (Common / Preferred)

### 4. Exit

- Liquidation Preferences
  - Liquidation Events
  - Single / Multiple / Interest
  - Participating / Non Participating
- Right of First Refusal
- Tag-Along / Drag-Along / Forced Sale
- Special Investors Rights
- IPO
  - Right to start process / Registration rights



## II. MAIN ISSUES (3/7)

### 5. Share Transfers

- Preemptive Rights
  - Automatic / Exceptions
- Lock-Up
- Right of First Refusal / Right of First Offer
  - Investors / All Shareholders
  - Common Shares / Preferred Shares
- Tag-Along
- Drag-Along / Forced Sale
- Call Options / Put Options / Clawback Shares (e.g. Good Leaver / Bad Leaver Clauses)



## II. MAIN ISSUES (4/7)

### 6. Future Financing

- Anti-Dilution
  - Protection against down rounds
  - Full Ratchet / Weighted Average (narrow/broad based)
- Subsequent financing rounds
  - Special Rules
  - Preemptive Rights
  - Pay to Play



## II. MAIN ISSUES (5/7)

### 7. Governance

- Majority / Minority
- Board
  - Composition
  - Chairman
  - Independent Member(s)?
- Protective Provisions
  - Special Majorities
  - Veto Rights
- Information Rights



## II. MAIN ISSUES (6/7)

### 8. Representations and Warranties / Indemnification

- Personal Liability of the Founders/Warrantors !
- Limitations:
  - Scope (catalogue; past vs. future)
  - Time
  - Amounts (cap; de minimis; threshold / basket / deductible; etc.)
- Indemnification: Shares and/or Cash

### 9. Covenants

- IP Assignment
- Non-Compete / Non-Solicitation



## II. MAIN ISSUES (7/7)

### 10. Exclusivity

- “No Shop” Scope
- Timing

### 11. Fees and Expenses

- Split / Break-Up Fee
- Cap / Triggering Event

### 12. Process Management

- Timing
- Drafting Responsibilities



## CONCLUSIONS

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