

What is a Term Sheet

This term originates from western jurisdictions, where it has long been applied. Literally, “terms” means the terms of an agreement, and “sheet” is a sheet of paper. Thus, we have rather an accurate description of this document – a sheet with terms. In Russia, such documents are also called notional agreements, although in practice a wide variety of titles may be encountered, for example:

- ✓ Memorandum of Understanding (MOU);
- ✓ Letter of Intent (LOI);
- ✓ Agreement concerning Basic Terms of Transaction;
- ✓ Project Implementation Agreement.

Depending on drafters’ imagination, there may be other alternatives as well.

These documents have a common purpose – to stipulate agreements of the parties prior to the signature of official documents relating to a transaction or a project. Hereinafter, Term Sheet, as well as any other similar documents, will be referred to as “TS” for convenience.

Why is it useful

To stipulate agreements of the parties is a common purpose, but to ensure better understanding of TS benefits, we would like to list main opportunities for using TS:

- ✓ It is possible to put on paper detailed terms and conditions of any complexity, which is very important, since a few months after negotiating the participants do not remember minor details, and they may look into the TS to see what exactly has been agreed upon;
- ✓ TS is a kind of “map” for lawyers, who will further prepare official documents, rationale for these or those actions, etc.;
- ✓ TS may be drafted in any language which is common to both parties – of course it means professional terminology which is best understood by the parties as well as foreign languages; one can also minimize the use of sophisticated legal vocabulary that often complicates the perception;
- ✓ TS can include the stages of project implementation – it is often difficult to draft one official

document that will contain all details, because a project may include the setting up of several companies, multiple independent transactions, implementation of a number of stages, each of which is executed as a separate package of documents; in this case, the TS serves as a baseline plan for parties.

In general, a TS is a good basic tool, which can be recommended for use in all cases where the above-listed benefits are relevant, provided that the parties (and their lawyers) understand the nature and the purpose of the document.

When it can be used

Traditionally, a TS is used for investment transactions, fundraising and other integrated projects. TS has a vast potential for use, although unfortunately many people just do not know all the benefits of this document. For example, a TS can be very efficient in projects related to the acquisition of assets (real estate, equipment, intellectual property) or in joint venture projects of several companies, e.g. in construction, energy, and finance industries.

In addition, it is vital to mention the regulation of relations with company management, conflict resolution, including corporate conflicts – in each of these cases one can use a TS as a document embodying the interests of all parties, as well as the ways to implement such interests; furthermore, a TS will always remain a guiding tool that does not lay the parties under legal obligations.

How to draft a TS

There are no strict rules, and there cannot be any, as a TS is not a legally binding document. However, it is possible and necessary to provide a number of TS drafting recommendations.

Firstly, one should not use bulky constructions. A usual contract is drafted so that someone other than the parties (court, tax authorities, etc.) can clearly understand what the parties have agreed upon. A TS is made up to ensure that the parties themselves understand what they have agreed upon, so the text should correspond to this purpose, both in terms of terminology (contain notions understood by the parties) and in terms of appearance, i.e. it must be clearly and logically structured, based on the essence of the agreements.

Secondly, one should remove whatever is not necessary – a TS should include only relevant and important conditions, unlike common contracts, where various insignificant phrases are often added, for the document to look more sophisticated. With regard to a TS, it is all right to describe a very large and expensive transaction on several pages. In practice, a TS often includes a description of the parties, their

assets, transaction stages, liabilities under the project, distribution of shares in the project.

Thirdly, it is not necessary for a TS to be signed by potential parties to a transaction or their managers. It is standard practice that a TS is signed by beneficiaries, one of the beneficiaries and a company somehow (sometimes even not directly) related to another beneficiary – there are numerous options. It is vital that the signatories are related to the agreements achieved, even if such relation is not formalized in any way.

Fourthly, it is necessary to specify that a TS is not a legally binding document and does not impose any obligations on the signatories. If a TS is drafted by a lawyer, it should be clarified (with references to related articles) that such TS should not be considered as an offer, an option, a preliminary or a framework agreement.

Can a TS be drafted by a lawyer? For many representatives of the business community, the answer to this question is obvious, they claim that of course it can, since a TS is a document, and documents are made up by lawyers. It makes sense, but in fact there may be some difficulties, because if a lawyer has not drafted a TS before, he/she might not understand why to sign a legally non-binding document and how the latter should be made up. As a result, it may look like a common contract, with its peculiar legal style, which will clearly be inconvenient for the parties. However, if the lawyer understands the features of TS structure and has relevant experience, he/she will do it better than anyone else, since good lawyers are able to make up logically structured documents.

Additional opportunities

It should be mentioned that a TS can also include some legally binding conditions. In this case, a lawyer should definitely be engaged, and the paragraph of the TS stating that the document is legally non-binding should include a relevant explanation. In practice, a TS often includes two types of legally binding conditions.

The first one is confidentiality. This condition is added when the parties want to particularly stress each other's obligations not to disclose the content of the agreements achieved.

The second one is exclusivity. This condition is used when it is necessary to minimize the chances of either party to participate in any similar (competing) projects or, for example, the risk of negotiating with any other investors.

The binding power and feasibility of these conditions largely depend on the specifics of the parties' agreements, and many other factors, including the specifics of a project. However, in any case, these conditions will be considered by the parties as officially binding, unlike the rest of the conditions which, as

said above, are intended for guidance only.

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