Harper James Solicitors video transcript: Commercial Loan Agreements

Hi, my name is Rana Chatterjee. I’m one of the commercial solicitors at Harper James.

At some point in a business’s life it’s more than likely that they’re going to need to borrow some money, whether that be to fund their growth and expansion plans or for the acquisition of something that the business needs. I’ve been approached by clients a lot in the past who have entered into loan agreements and have already signed them and are looking to find out what their obligations are or have had some issue with the way that the obligations are impacting their business because they’ve come to understand what it really means. And what I try and impress upon those clients is that it’s really important to get lawyers involved at an early stage so that they can review the documents whilst they’re being negotiated, rather than just signing them as is.

Contrary to what some businesses might believe, banks are just as keen to lend you money as you might be to borrow it and there is plenty of room for negotiation and it’s important that that negotiation takes place because there are different terms in a loan agreement that will affect how you can run your business day to day. These are things like payment schedule which impacts how much money you’re due to repay and over what period of time, and you would think that those things would have been agreed beforehand but more often than not there are misunderstandings in exactly how the payment schedule is intended to work and it’s important that these are sorted out at the outset rather than further down the line. There are also obligations and conditions often as a result of the loan agreement being put in place and I’ll talk a little bit about those later on.

When it comes to security, it’s important to really understand what the implications are of giving security over assets in the business. And that’s because this can affect what you can do with those assets, running from whether or not you can dispose of them to whether or not you can give them the security to third parties as part of your normal business practices and things like guarantees will be prohibited under some security arrangements under a loan agreement. Most often, the security arrangements will be set out within the loan agreement itself but occasionally there will be separate security documentation and it’s just as important to get that reviewed to understand exactly what it means for your business and the impact that giving that security will have.

One of the other aspects of loan agreements that I have mentioned was the obligations and conditions that are set out that apply to a borrower under a loan agreement and these are often things that restrict what you can do in terms of the way you run your business and sometimes they will require you to take out interest rate hedging. Thiis will be because the loan will be a particular interest rate and the bank wants to make sure you’ll be able to make your repayments under that loan, even if the interest rate went up, and the interest rate hedging essentially gives you that protection. But the interesting thing is that most often you’re required to pay for the privilege of taking out that interest rate hedging and sometimes those interest rate hedging provisions are set out in the loan agreement but most commonly they’re in a separate document called an ISDA Master Agreement, although there are some other more bespoke and company specific versions out there.

These documents, particularly when it forms part of a loan arrangement, really need careful consideration because too many times in the past I have seen situations where a loan agreement and hedging agreement, such as an ISDA, don’t work together in the way that they should and there are contradictions which mean that the business is being put in a very difficult position whereby it can’t satisfy its obligations under the hedging agreement at the same time as satisfying its obligations under the loan.

Often, you’ll see hedging arrangements as part of larger syndicated loans where businesses borrow not just from one bank, because that bank doesn’t want to take the risk for that loan all by itself, and it will go out and approach other banks and form a syndicate and that syndicate will lend money to a business. And syndicated loan arrangements come with a larger suite of documentation, including things like intercreditor deeds and hedging arrangements are usually a condition of those and, again, wherever those arrangements have been entered into it’s really important that a lawyer is involved at some stage to review those documents before they’re signed to make sure that they work in the way that both the business and indeed the banks intend them to.