Harper James Solicitors video transcript: Non-Disclosure Agreements

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

Non-disclosure agreements or confidentiality agreements are commonly entered into between businesses and this is to govern the exchange of information between them to make sure that any of that information that’s exchanged isn’t shared more widely than either of the parties would like. This might be because of trade secrets or just because of any particular sensitivity over certain types of information or over certain aspects of the business. There might be clients who you enter into relationships with that ask you to sign their own standard form of NDA or you might ask for an NDA to be signed because you’re going to send information to other parties but, in either case, it’s important to understand what the obligations are under these kinds of agreements.

You might have received an NDA from a party that’s proposing to send you some information or you might wish to have a party that you’re sending information to sign an NDA. Either way, it’s important to make sure that the terms of the NDA match your business and the arrangement that you’re proposing with respect to the information or the underlying services.

There are lots of key terms in the NDA that might impact the way in which your business operates and it’s important to make sure that those two are aligned so that the NDA doesn’t impose any obligations on the way in which you run your business that would restrict the extent to which you can do the things you would normally do. There are terms such as those relating to the type of information that’s going to be disclosed. Now, it might be that you are in discussions over a particular project or set of services that are going to be provided by one party to another and usually you’d like the confidentiality obligations restricted to just that particular project or set of services, as opposed to any other information that might be exchanged for different reasons. It’s also important to make sure that there are sufficient exemptions in the agreement to govern the extent to which the confidentiality obligations apply, such as if there is a regulator or other supervisory body or indeed the courts are asking for information to be released whereupon you are under an obligation to them and you need to make sure that there is an exception in that confidentiality agreement that allows you to disclose that information without you being in breach.

The type of information that’s covered by an NDA is also important. To be specific that you want to make sure that it is covering that information which is sensitive and not any other information that’s been disclosed for separate purposes. If you’re entering into an arrangement with a counter party to cover the provision of certain services or a project that you are doing in collaboration then it’s seems in most case to be appropriate for the confidentiality obligations to extend to cover information disclosed in relation to that project or those services, rather than governing information that might be exchanged more widely between the two parties. You also may want to disclose information to your third party contractors or other consultants and certainly your employees that are going to be involved with the worker will necessarily need to see that information and these are the kinds of things that you need to make sure are covered.

It’s also important to be specific on the duration of the agreement and this is something that’s often contested between parties and most often negotiated. The confidentiality obligations will usually run for a set period either from disclosure or from the date of the agreement and it’s important that those are proportionate and fair and reflect the level of confidentiality often with information that’s confidential for a particular reason, either because of technology or because of a particular trade sensitivity. It might be that that sensitivity is no longer applicable after a period of two or three years and you wouldn’t want the confidentiality obligations to outlive the industrial sensitivity of that information and so it’s important to review them both in the context of your business, the type of information that’s been disclosed and the industry in which you and the counter party operates whenever you’re entering into an NDA.