Harper James Solicitors video transcript: Leaver Provisions

Hi, I’m Jas Bhogal. I’m a corporate solicitor at Harper James Solicitors.

Leaver provisions are often contained in the Articles of Association of a company and are there to protect the investors and give them some comfort in relation to shares held by founders and/or employees of a company. The way they work is, if a founder or employee leaves a company during a set period of time, which is often between two to four years from the date of adoption of the articles or the date that they started their employment, they will potentially lose some or all of their shares. The shares held by the founders or employees are often subject to vesting which will, as I said, commence from the date that they started their employment or the date that the articles were adopted. It is often useful to try and negotiate that a certain percentage of the shares are not going to be subject to the vesting provisions and an argument for this is that the founder has been involved in the company from day one, has often taken no salary and it would seem unreasonable if, two years down the line when they’re in the position to complete an investment, all of their shareholding in the company would be subject to the leaver provisions which potentially means they could lose their entire shareholding in the company.

If a founder or employee leaves within the specified period then a certain percentage of their shares, ie, the unvested shares, will be subject to either compulsory transfers or can sometimes convert into deferred shares, which are effectively useless and have no value.

The number of shares which were subject to the compulsory transfer provision will be linked to the date that the founder ceases to be an employee of the company and will also be subject to the terms which have led to the employment ceasing.

That is where the good leaver/bad leaver provisions come in and it is important to look at those definitions to make sure that you understand what will result in what circumstances will give rise to you falling into the various definitions which could have huge consequences on the value you receive for any shares which are subject to any compulsory transfer provision.