

What is a Non-disclosure Agreement?

Any business carries out transactions with other individuals or businesses where they need to share trade secret, information received from clients that are confidential or market data that they want to keep far away from competitors. All such information requires protection. It is important that the employees of the corporation or anyone involved in the business dealings of the company do not divulge confidential information relating to the company's activities.

How can a business corporation ensure that their trade secret and business transaction data are protected and not divulged by anyone involved in the company's dealing? A prudent business corporation generally makes its employees and business associates sign a non-disclosure agreement to ensure confidentiality of its business dealings and trade secrets. Read on to know more about this ubiquitous Non-Disclosure Agreement

A non-disclosure agreement (NDA) is an agreement between (at least) two parties, where one is the provider of the information that is to be protected and another is the receiver of the information. The non-disclosure agreement works on a very simple principle; it creates a legal obligation on the receiver of the information not to disclose it to anyone else outside the terms of the contract. In case the receiver discloses any information to a third party (only for the purposes of the contract), he has to ensure that such third party agrees in writing to receive such information under terms at least as restrictive as those specified in the original agreement. The point is, the person who is receiving the information is promising not to tell anyone else what has been told to him in confidence.

Typically, a Non Disclosure Agreement also provides:

- i> that the party receiving the information recognizes that it is confidential and proprietary;
- ii> that the party receiving the information will not to utilize the information for his/her own benefit; and
- iii> that the information and all documents, charts, graphs, notes, memoranda and other items embodying the information will be returned to the disclosing party within a specified period of time.

Although an NDA generally casts obligation on one party but at times it may be mutual, i.e. it may obligate both the parties (individuals, companies etc.) not to disclose confidential information entrusted to their respective selves.

Nature of the Protected Information

Any information which may not be in public domain, or generally known, may be protected by a non-disclosure agreement. It can protect any sort of confidential information like

- a concept for a new restaurant
- a new business venture
- any sort of confidential business information that could be of value to others if it were disclosed.

A non-disclosure agreement would ideally lay down the boundaries, the information within which should not be disclosed. The nature of information that comes within these boundaries is that of intellectual property which includes copyrightable material, potentially patentable inventions, trade secrets, formulas, processes, composition, compounds, plans, blueprints etc. It may also include a company's customer list, prospective customers, business relationship and affairs etc., which is collectively known as proprietor's information. Any leakage such information (specially trade secrets) can do an irreparable damage to a company.

In an employer-employee relationship, a non-disclosure agreement usually comes attached with a non-compete agreement, by virtue of which, the employee cannot disclose the information not only during the period of employment, but also for a certain period after the termination of such employment.

Uses of a Non-Disclosure Agreement

A non-disclosure agreement is very useful to multinational corporations, but it is equally useful to small companies, partnerships, individuals and most importantly to start-ups, since all of them, at one point of time or another, have to deal with outsiders and entrust confidential information to them in the course of their businesses.

A start-up can be anything; it can be an idea, a business model, or a patentable invention and so on. A start-up cannot keep these ideas locked in, it has to disclose them to the investor who may be showing the promise to eventually turn the idea into a success. So to a start-up, these agreements come very handy; it allows them to share the information with people whose input it needs, for example in case of a patentable

invention, the inventor may like to have opinion of an expert in that field, in case of a business idea, the person coming up with such as idea may need a lawyer to register the business organization, so having a non-disclosure agreement signed with those outsiders ensures that the information is not leaked to someone or is not used for another's benefit jeopardizing the interests of the primary party (owner of the information).

A non-disclosure agreement may also be very useful in industries like film and television etc. So, if you are from any such industry where a lot of intellectual creation takes place, you may be frequently required and you will frequently require others to sign a NDA. Also, one of the prominent recent industries, wherein the idea of NDA has recently been gaining popularity, is the fashion industry where it may now require attendees to stay mum for certain period or till the launch of the collection. So an NDA may be the best possible tool to safeguard information you don't want many people to know.

Exceptions

An NDA ensures that your information stays safe and is not leaked, but there may be some exceptions to this surety, For example, a person, who is under an obligation to keep the information a secret, may be required by a court to disclose it – now when such a condition arises, the lawful order of the court will of course prevail over the obligations imposed by the NDA. Also, if the person is already in possession of any such information, or obtains the information from another source, he may not be bound by NDA not to disclose such information to any other party. Moreover, a matter of policy and national security will over-ride the NDA.

Does a Non-Disclosure Agreement need Registration and/or Stamping?

A legal instrument, document or contract has value because it is capable of being enforced in a court of law. In order to enforce the contract, it will need to be presented in court to prove the fact that you (and the party you are enforcing it against) had entered into it legally, and to prove the validity of the terms of the contract. Therefore, in order to present it before court, you should keep certain procedural formalities in mind:

Stamping

Stamping is a necessary procedural formality, without which your document will not under regular circumstances be accepted in Court. The rate for stamp duty on a non-disclosure agreement will vary from state to state, but it should generally range from Rs. 20 to Rs. 100 in most Indian states.

Registration

A non-disclosure agreement can be registered as per the Registration Act, 1908 by approaching the Office of the Sub-Registrar of your district or city. The charges for the same and detailed rules for registration vary from state to state. Registration helps a long way in proving the veracity of the contents of a particular document.

Notarization

Usually, parties may choose to get an agreement notarized. A notary's function is that of a witness; a notarization signifies that the notary has personally witnessed the parties putting their signature to the contract. In the absence of a witness, a party could invent many excuses to argue that he is not bound by the terms of the contract. For example, he could argue that he never signed the contract, or that the signature is not his, or that his signature is forged by someone else. While in India, there is no legal requirement to use a notary for agreements, a notarization will be helpful in preventing parties from denying execution (signing) of the contract by themselves. The costs for notarization vary from city to city. For example, a leave and licence agreement with Rs. 10,000 to 15,000 per month as rent costs around Rs. 200 in Kolkata.

Registration and notarization are not legally necessary, but are always advisable, as it makes it easier for you to prove your case.

In case of any query or suggestion you can drop a mail to us at info@ipleaders.in

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