

What you should know about confidentiality agreements

Confidentiality agreements have played the role of discussions openers and have usually set the tone as to how complex future documents negotiations between the parties will unfold. Commonly referred to as Non-Disclosure Agreements (NDA's) they have sat through deals initiation, labor matters, negotiations and played a major role in reassuring the disclosing party with regards to the importance of keeping its data confidential.

Whether it is a new patent, financials, operation manuals or any other valuable information or intangible assets, professionals have taken it upon them to always ask for a confidential agreement signature, aiming at protecting their trading secrets and priceless information.

However, the protection offered by these types of agreements or clauses was and still is prone to many questions with regards to its effectiveness or ethicality.

How do we ensure that, the information we are committed to protect will not be leaked? Where do we draw the line between valuable information being an essential part of a business growth and information being covered by secrecy to hide unethical or illegal behaviors?

How do we, as legal professionals, ensure the enforceability and define adequate compensation against confidentiality violation? How do we ensure that, in our strive to protect the company's confidential information we do not end up protecting sexual harassers or laws transgressors? And how do we ensure that, once the confidentiality agreement is in place its content is respected and no misuse of the confidential information will take place?

With regards to the protection of valuable information shared in the frame of negotiations, a confidentiality agreement should incorporate the below statements:

- 1- A clear definition of the information under protection.
- 2- The time frame of the confidentiality
- 3- The exclusions or the permitted disclosures
- 4- Remedies in case of usage or disclosure.

Nonetheless, as legal advisors, we owe it to our clients to remind them of the sometimes-limited coverage provided by the Non-Disclosure Agreements and the extent of care they must use to protect the dispatch of the information. Data rooms with no possibility to copy or duplicate the data, documents handed in hard copies or soft copies over company owned tablets can be much more protective than the most extended state of the art agreement... After all no one will take care of your information better than you!