



Non-Disclosure Agreement in India: Essential Features



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What is a Non-Disclosure Agreement?

A Non-Disclosure Agreement (NDA) is a contract between two or more parties not to disclose any confidential information. Confidential information is something which has to be secret. The following are examples of confidential information:

- Information relating to a secret recipe used in the formulation of a consumable item.
- A new invention has some industrial use for a particular purpose.
- The information provided to employees in the course of their employment.
- Works carried out in Pharmaceutical companies, microbiology and chemical labs come under the purview of confidential information.
- Information related to particular client data of the company.
- The information which is required to be protected under various information technology law.

Non-disclosure Agreement is also known as a Confidentiality Agreement or a Secrecy Agreement. Non-disclosure agreements in India are called confidentiality agreements. However, even though there are synonyms for

a Non-disclosure agreement, the ultimate purpose of the Non-disclosure agreement is the same.

Law related to Non-Disclosure Agreement in India

Non-disclosure agreement in India is governed by the Indian Contract Act, 1872. A Non-disclosure agreement is where two or more parties enter into a contract to agree not to disclose the confidential information specified in a particular process. Apart from this, non-disclosure agreements are also present in employment contracts and intellectual property agreements.

The validity of a Non-disclosure agreement in India is on the requirement of being stamped. A Non-disclosure agreement can only be valid and enforceable if it is registered under the Registration Act 1908. In India, a Non-disclosure agreement has to be stamped to be binding. In the eyes of the law, stamping is an essential step for any document to be valid.

What is the purpose of a Non-Disclosure Agreement in India?

A Non-disclosure agreement is entered into between parties to protect information which is confidential to the business.

If there is no Non-disclosure agreement, then there can be issues such as information breaches, data theft and secret information will be shared to the competitors of the company. Therefore a Non-disclosure agreement protects the interests of the company. By having a Non-disclosure agreement, the parties understand their rights and duties regarding the agreement. Since the Non-disclosure agreement has a binding force, the parties have to follow it.

Types of Non-Disclosure Agreement in India

The most commonly used Non-disclosure agreements in India are the following:

1. **Unilateral Non-Disclosure Agreement** – As the name indicates, there will be only two parties who are involved in this agreement. In this form of a Non-disclosure agreement, one party will be disclosing certain information, and the other party has to abide by the rules. Example of a unilateral Non-disclosure agreement is between a company and its employee.
2. **Bilateral Non-Disclosure Agreement** – As the name indicates, two parties are involved in disclosing confidential information to each other. However, the main difference between the unilateral and bilateral Non-disclosure agreements is that both the parties

have confidential information. When disclosing such information, both parties have mutual rights and liabilities regarding the importance of confidentiality. A classic example of a bilateral Non-disclosure agreement is when a merger occurs between a selling company and the target company there is an exchange of Non-disclosure agreements between the selling and target company.

3. **Multilateral Non-Disclosure Agreement** – As the name indicates, there will be more than two parties in a multilateral Non-disclosure agreement. All the respective parties will enter into Non-disclosure agreements with each other and share mutual rights. An example of a multilateral Non-disclosure agreement is between three parties – Manufacturer, Supplier and Distributor.

Also, Read: [Format of Confidentiality Agreement](#).

Importance of entering into a Non-Disclosure Agreement in India

For every business, it is crucial to sign a Non-disclosure agreement when they are entering into contracts with various parties. The requirement to enter into a Non-disclosure agreement in India is essential in the following circumstances:

- **Business needs-** If there are many parties in the contract, then the parties have to enter into a multilateral Non-disclosure agreement. If there is a third party creating a logo or trademark for a product, then the third party is required to enter into a Non-disclosure agreement with the creator/ proprietor of the product. Having an agreement between the third-party and the creator will provide protection in case of disclosure of information. Usually, small companies dealing in software would benefit from a Non-disclosure agreement. It would give them a right to sue in case there is a disclosure of information. The company also has an added layer of protection against its competitors from using confidential information.
- **Due Diligence/ Merger and Acquisition** – Parties of a merger have to sign a Non-disclosure agreement. There will be complex information, such as employee details, IP rights, property rights and data rights. In such a situation, it would be crucial to sign a Non-disclosure agreement.
- **Collaboration** – If there is a joint venture/ partnership or collaboration between two companies, then both the companies would be sharing information and have access to sensitive data. In this situation, entering into a Non-disclosure agreement would be vital.
- **Employment Contracts** – Employment contracts must have a clause relating to the protection of confidential information. The employee would be

liable in case there is a disclosure of data to third parties.

- **Securing Seed Funding or Investment** – Having a Non-disclosure agreement would be essential for your business if you're securing further funding from a financial institution.
- **Franchising Opportunities** – When companies enter into franchising agreements, they enter into Non-disclosure agreements to protect secrets. Multinational fast food companies enter into Non-disclosure agreements to protect secret recipes of certain food products.

A non-disclosure agreement can be added to contracts in the above scenarios.

Non-disclosure Agreement in India: Important Clauses

While drafting a Non-disclosure agreement in India, it is crucial to have the following clauses:

- **Parties-** It is essential to have the name of the parties mentioned in a Non-disclosure agreement. Depending on the number of parties, the Non-disclosure agreement will be unilateral, bilateral or multilateral.
- **Definition of confidential information-** Next clause in the agreement will cover the definition of what is confidential information in the contract. The

information which is not classified as confidential information will be exempt from classification. Examples of information which is exempt from confidentiality are information already present in a public domain or if the information has been disclosed earlier.

- **Time Frame of the Non-disclosure agreement-** The time frame of the agreement will ensure that there is a limited period for confidentiality. This will not extend after the time frame is over.
- **Rights of the Parties in a Non-disclosure agreement-** What are the obligations and liabilities of the parties in the Non-disclosure agreement.
- **Right to sue in case there is a breach of the Non-disclosure agreement-** Contractual Remedies available to the parties.
- **Compensation in Damages or Injunction-** In case there is a breach of the Non-disclosure agreement, the aggrieved party can sue the party in breach for damages. The aggrieved party can also issue an injunction against use of confidential information in the future.
- **Arbitration/ mediation clause-** There must also be a clause in the Non-disclosure agreement regarding out of court settlement and procedures such as negotiation or mediation using an impartial third party.

Benefits of a Non-Disclosure Agreement

- Protects confidential information of the parties in a Non-Disclosure Agreement.
- Reduces the chances of loss of valuable information.
- Acts as a protection to the party disclosing information.
- Provides legal recourse in case there is a breach of the agreement.
- NDA is beneficial in commercial scenarios where there are a large number of parties in the contract.

Conclusion

Non-disclosure agreement in India serves as a blanket for protection of confidential information of the parties. This type of agreement can be invoked in many circumstances where the parties are dealing in commercial businesses. However, Non-disclosure agreements in India also apply to situations where there is a relationship between an employer and employee. Therefore Non-disclosure agreements in India can be used in circumstances where there is a disclosure of confidential information. If the information is classified as confidential, then the parties have the right to enter into a Non-disclosure agreement.



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