

# Practical tips for confidentiality and non-disclosure agreements

## Many transactions which a company enters into with another business may require a confidentiality or non-disclosure agreement before negotiations start.

It is always advisable to get a signed confidentiality agreement in place before any confidential information is disclosed. However, there are a number of practical ways in which a party disclosing information can ensure that the recipient protects confidential information and complies with their obligations under the non-disclosure agreement (NDA) and/or the Data Protection Act 2018.

### Identify the recipient of the information

Each person responsible for disclosing confidential information should be made aware of who is and isn't authorised to receive it.

A company should not assume that just because an individual is copied into an email he is necessarily authorised to receive this confidential information. Also, before allowing anyone to be an authorised recipient under any NDA, the disclosing party should be satisfied that he is willing to receive the confidential information and that he will comply with its obligations.

### Keep records

A disclosing party should always keep a record of what confidential information it has passed on to the recipient. If necessary, this will allow it to keep track of what information or documents to ask the recipient to return or destroy under the terms of the NDA, and to identify the source of any leaks of information which may occur in the future.

### Hard copies only

For extremely sensitive information, it may be appropriate for a disclosing party to distribute just hard copies of the document (rather than electronic ones) and only to specifically named recipients.

### Labelling

Any documents containing confidential information, or emails of confidential information, should be clearly marked as 'confidential'.

### Passwords/encryption

If a disclosing party labels a document 'confidential' this may not be enough to deter individuals within an organisation from accessing such information. There are ways to protect it which will minimise the potential for any accidental disclosure, either by creating a file with a password or encrypting the files themselves.

### Give advice

It is important at the outset to instruct all parties receiving the information as to the methods to be used for keeping it confidential in accordance with the terms of any NDA.

### Corporate transactions and data rooms

During a corporate transaction, where a vast amount of company information will be disclosed to a recipient, it is common to have a 'data room'.

An electronic data room is an effective way of protecting the confidential information as access to the data room will be password protected. This is a good way of restricting access and to monitor who has logged on to view the documentation.

## Contact

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