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SOLUTIONS

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NDAs in South Africa: when you need one and what to include

A non-disclosure agreement (NDA), also called a confidentiality agreement, is a contract in which one or both parties agree to keep certain information confidential and use it only for an agreed purpose. In South Africa, an NDA is enforceable like any other contract, and the usual remedies are a court order (interdict) stopping the disclosure or use, and damages. It works best when it clearly defines what is confidential, why it's being shared, how long the duty lasts, and what happens to the information at the end.

REVIEWED BY THE ELS TEAM

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AT A GLANCE

- An NDA is a **contract**, enforceable like any other.
- The key remedy is an **interdict** stopping further use or disclosure.
- Get it signed **before** you share the information.
- An NDA protects information. It **doesn't stop competition**; that needs a restraint of trade.

When to use an NDA

Use an NDA before you share information that would hurt your business if it got out, for example:

- Pitching to an investor, partner or potential buyer.
- Briefing a developer, designer, consultant or other contractor.
- Exploring a joint venture or supplier relationship.
- Sharing pricing, client lists, product plans, source code or financials.
- Interviewing a senior candidate who will see sensitive information.

Employees are usually bound by confidentiality in their employment contract. Contractors aren't employees, so they need confidentiality terms in their contract or a separate NDA.

Mutual or one-way?

TYPE	USE IT WHEN
One-way (unilateral)	Only one party is sharing confidential information, for example you briefing a contractor
Mutual (bilateral)	Both parties will share confidential information, for example two businesses exploring a deal

What a good NDA includes

1. **The parties:** full legal names and registration numbers.
2. **The purpose:** why the information is shared. The recipient may use it only for that purpose.
3. **A clear definition** of confidential information.
4. **Exclusions:** information already public, already known, received lawfully from someone else, or developed independently.
5. **Obligations:** keep it secret, use it only for the purpose, limit access, and protect it.
6. **Permitted disclosures:** to advisers bound by confidentiality, and where the law or a court requires it.

7 **Duration:** how long the duty lasts.

8 **Return or destruction** when discussions end.

9 **No licence:** sharing doesn't transfer ownership or IP.

10 **Remedies:** confirmation that an interdict may be sought as well as damages.

11 **Governing law and disputes.**

How NDAs are enforced in South Africa

- **An interdict:** a court order stopping further use or disclosure. Often the most useful remedy, because a leak is hard to undo.
- **Damages:** compensation for the loss caused, which you must prove.
- **A penalty clause:** an agreed amount payable on breach. Under the Conventional Penalties Act, a court can reduce a penalty that's out of proportion to the actual prejudice.

> **Labels aren't enough.** Courts protect information that is genuinely confidential and has value to the business. Information that's already public, or is just general skill and knowledge, won't be protected by calling it confidential.

NDAs and restraints of trade are different

An NDA stops someone using or disclosing your information. A restraint of trade stops someone working for a competitor or competing with you. In South Africa, restraints are enforceable unless they're unreasonable and contrary to public policy, and courts weigh the business's protectable interest against the person's right to work. Many contracts include both.

NDAs and POPIA

If the information includes personal information, such as client or employee details, an NDA alone may not be enough. Where someone processes personal information on your behalf, POPIA requires a written agreement with specific security obligations, often called an operator agreement.

Five common NDA mistakes

1 **Defining confidential information as "everything".** Overbroad definitions are harder to enforce.

2 **No purpose clause.** It's unclear what the recipient may do with the information.

3 **Signing after the information is shared.**

4 **Relying on an NDA to stop competition.** That needs a reasonable restraint of trade.

5 **Forgetting POPIA.** Sharing personal information may need an operator agreement too.

Frequently asked questions

Is an NDA legally binding in South Africa?

Yes. An NDA is a contract and is binding if the normal requirements for a valid contract are met.

Does an NDA have to be signed?

A signed NDA is the best evidence of the agreement. Electronic signatures are generally valid for this kind of contract under the ECT Act.

How long should an NDA last?

It depends on the information. Two to five years is common for commercial information, while trade secrets may be protected for as long as they stay secret.

Can an NDA stop an employee working for a competitor?

No. An NDA protects information. Stopping someone from working for a competitor needs a restraint of trade, which must be reasonable to be enforced.

Protect your information before you share it

The ELS Confidentiality Agreement (NDA) is drafted for South African law. For a new business that needs an NDA plus client, contractor and privacy documents, see the Essential Legal Starter Pack. Not sure what you need? Take the free Legal Health Check.

SEE THE NDA | TAKE THE FREE LEGAL HEALTH CHECK

INFORMATION, NOT ADVICE

ELS provides legal information, not legal advice. Nothing in this guide creates an attorney-client relationship. For advice on your specific situation, consult a qualified attorney. The law is stated as at 30 October 2026.

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Attorney-drafted legal documents and plain-English legal information for South African businesses. Not sure what your business needs? Take the free Legal Health Check.

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