



Overview

‘Trade Secret law’ in India is somewhat of a misnomer given that courts in India rely on a diverse and creative interpretation of existing confidentiality and fiduciary responsibility laws to administer the trade secret regime.

Trade secrets are recognised as vital and sensitive intellectual property that do not answer wholly to the definition of copyright, design or patent, but imbue substantial economic value.

Whereas several jurisdictions have codified trade secret regimes, many, like India, rely on common law and laws contiguous to confidentiality to achieve their objective. By intertwining fiduciary duty, breach of confidentiality and copyright laws, Indian courts have developed fairly refined principles and standards for protecting trade secrets.

Sensitive and proprietary confidential information – often used interchangeably, though perhaps not entirely accurately, with trade secrets – must ideally be protected by way of non-disclosure agreements, measures to control access to information, and by building awareness of confidentiality policies with employees.

Indian contract law will void a contract purporting to protect confidential information through what may be viewed as unfair terms. Courts’ attitudes towards protection of confidential information also hinge on the nature of the information and the relationship between one trying to claim protection over the other. In commercial contracts, such as between purchasers and suppliers, the proclivity is to protect the business interests of the one making the trade secret claim. Conversely, courts are conservative when it comes to disputes over employment contracts having terms that render an employee idle after termination of service, or seek to restrain his or her ability to conduct trade in a similar (or even identical) business.



The Firm's contractual practice has seen it advise on and manage trade secret policies for a diverse clientele. We have considerable expertise in implementing confidentiality and access control policies and have drafted highly customized and effective employment and commercial contracts. Our litigation team has assisted many Indian and foreign corporations in effectively enforcing their rights ex post loss of confidential information even in the absence of an agreement or contractual relationship between the parties.



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