Virtually every business, large or small, needs to protect sensitive information in the course of engaging in business transactions, and confidentiality agreements are the most commonly used mechanism to provide for non-disclosure of vital information. ICC Model Confidentiality Agreement is the latest in a series of widely used model contracts published by the International Chamber of Commerce.

The model confidentiality agreement and stand-alone model confidentiality clause are designed to assist business people and lawyers by providing balanced, reliable models that can be used in transactions across sectors and borders. In particular, the models allow parties flexibility to tailor the provisions to their transactions, providing alternative language for situations having more than one solution, and highlighting issues that warrant consideration.

Practical and flexible, ICC Model Confidentiality Agreement and ICC Model Confidentiality Clause are essential tools to help businesses engaged in international transactions protect their competitive edge.

The International Chamber of Commerce, the World Business Organization based in Paris, is the global leader in the development of standards, rules and reference guides for international trade.
ICC Model Confidentiality Agreement

ICC Model Confidentiality Clause
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Confidentiality agreements are the most frequently used means of providing for non-disclosure of sensitive information in the context of business transactions. Almost every business, large or small, will engage in a transaction requiring attendant commitments of confidentiality and will have to face the challenge of preparing a confidentiality agreement.

In order to give business people and lawyers who are not experts on the subject a reliable model upon which to draw, ICC has prepared this Model Confidentiality Agreement and Model Confidentiality Clause, which may be incorporated into existing agreements expressly or by reference. The models provide balanced, cross-sectoral, legal platforms that take into account the needs of both the disclosing and receiving parties.

The model agreement and clause, part of a successful series produced under the chairmanship of Fabio Bortolotti (Italy), are the result of extensive discussion in ICC’s Commission on Commercial Law and Practice, and in particular by its Task Force on Confidentiality Agreements, chaired by Filip de Ly (Netherlands) and Åke Nilson (United Kingdom). The model has benefited from the active participation of the following Task Force members: Christoph Martin Radtke (France), John Bezant (United Kingdom), Manfred Grünanger (Austria), Bruno Heynen (Austria), Lothar Hofmann (Austria), Olivier Vaes (Belgium), Jingzhou Tao (People’s Republic of China), Christine Lecuyer-Thieffry (France), Jane Willems (France), Lars Münch (Germany), Dharmasinh Popat (India), Arisa Takata Herb (Switzerland), András Gurovits Kohli (Switzerland), Michel Ruffieux (Switzerland), Ercüment Erdem (Turkey), Christoph Liebscher (Austria), Olivier Vaes (Belgium), Francine Gurral (France), René von Samson-Himmelstjerna (Germany), Merja Kohonen (Finland), Tom Vapaavouri (Finland), Alfred Pfister (Germany) and Sigrid Hintzen (Germany). ICC expresses its gratitude to all of them.
Introduction

On 27 May 2004, the ICC Commission on Commercial Law and Practice (CLP) formed a Task Force on Confidentiality Agreements to prepare an ICC Model Confidentiality Agreement in response to a request from a large number of companies that had expressed a need for a global, cross-sectoral confidentiality agreement. The ICC Task Force met on five occasions and, after a global consultation process, the Model was presented to the above-mentioned ICC Commission for adoption on 27 October 2005.

During its work, the Task Force came to the conclusion that the provisions of the Model Confidentiality Agreement it was preparing could also be used, without major additional efforts or amendments, for the purposes of drafting confidentiality clauses. For that reason, the Task Force has prepared both an ICC Model Confidentiality Agreement and an ICC Model Confidentiality Clause. The Model Confidentiality Agreement is presented below on page 8; the Model Confidentiality Clause 2006 on page 13.

Protecting all kinds of confidential business information (be it technical, commercial or financial) is a legitimate business concern in various industries and branches of trade and arises in relation to a variety of business transactions. Confidentiality agreements are often concluded prior to passing on any confidential information and many international contracts contain general confidentiality clauses.

There are many models in use; each company tends to treat its own confidentiality agreement with great pride and possessiveness, which causes delays, discussions, negotiations and higher transaction costs.

The ICC Model Confidentiality Agreement and the ICC Model Confidentiality Clause 2006 attempt to provide to industry and commerce a common platform for confidentiality obligations, which may be acceptable in various industries and transactions or, at least, reduce the scope of discussions and negotiations regarding confidentiality agreements and clauses.

Notwithstanding the obvious advantages of standardization, a number of qualifications must be made.

First, the two models presented here have not been drafted with any particular industries in mind and the models may have to be adjusted to reflect the specific needs of certain industries.

Second, the two models have been designed to apply to a wide variety of situations, but may well need adaptation for certain specific contracts or to better reflect the particular nature of certain transactions.
These two elements are reflected in the following chart:

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Optional clauses can be added for certain types of transactions.
In addition to the two qualifications above, three more elements may be noted.

First, the ICC Model Confidentiality Agreement and the ICC Model Confidentiality Clause contain, of course, non-mandatory provisions and parties considering using these models may thus depart from any of their provisions. In this respect, the Task Force has attempted to strike a fair balance between the interests of the Disclosing Party and the Receiving Party, but the parties, on the basis of their respective bargaining positions or for any other reason, may opt for other solutions.

Second, both models have been drafted in order to accommodate business parties in different jurisdictions and, thus, may provide a common platform for parties from different countries. However, the parties are advised always to consult local counsel to have the models reviewed against any applicable rules (such as contract law rules or regulatory rules such as export control rules).

Third, the Task Force has refrained from specifically addressing questions as to third party effects of the two models presented, because these effects were considered to be too different from one jurisdiction to another. Thus, it is recommended always to consult local counsel to reflect upon proper contract language and mechanisms where it is desired to bind third parties to confidentiality obligations, or to achieve any other third party effects (such as specific confidentiality agreements with third parties or accessions or assignments to have similar effects).

The Task Force hopes that the fruit of its work may be appreciated by business and that the models will find their way into practice, or provide inspiration to contract drafters.

Comments and questions may be addressed to:

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