Clifford Chance

BRIEFING

Altana & Illiquidx Appeal: Key Issues, Strategy and Prospects

July 24, 2026

The Court of Appeal has handed down its judgment in *Illiquidx Limited v Altana Wealth* Ltd, dismissing the defendants' appeal in its entirety. Arnold LJ delivered the leading judgment just nine days after the hearing on 30 June and 1 July 2026.

The appeal arose from the February 2025 first instance decision of Rajah J. The Court of Appeal confirmed that a package of information relating to a business or investment opportunity can attract legal protection as confidential information, provided it is sufficiently well-defined. It also provided clear guidance on the interpretation of "public domain" carve-outs commonly found in NDAs — guidance with direct practical implications for those marketing investment opportunities.

This alert examines the key lessons from the judgment on the law of confidentiality, NDAs, and trade secrets — and sets out the practical steps that those operating in the investment management space should consider as a result.

Key issues

BACKGROUND

This case concerned an action for equitable breach of confidence, infringement under the Trade Secrets Regulations 2018 (the "**Trade Secrets Regulations**"), breach of contractual obligations of confidence, and copyright infringement. Illiquidx, Altana and Brevent entered into a joint venture ("**JV**") with the purpose of setting up a fund, the Altana Illiquidx Canaima Fund ("**AICF**"), for investment into Venezuelan debt. On 28 June 2019, the parties signed a letter setting out the terms of the JV and on 8 July 2019 the parties signed an NDA but the fund was not ultimately launched, with the JV ending in November 2019. In July 2020, Altana set up its own fund focussing on distressed Venezuelan debt — Altana Credit Opportunities ("**ACOF**") — which Illiquidx alleged was based on its proprietary business opportunity.

Illiquidx brought four claims against Altana and the co-defendants:

(i) breach of confidence in respect of the "business opportunity" – the opportunity to set up a sanctions compliant fund to exploit undervalued Venezuelan debt – and "the detail" – a number of documents outlining the opportunity and proposed structure;

(ii) infringement of the Trade Secrets Regulations;

(iii) copyright infringement in respect of a slide deck prepared by Illiquidx to market the opportunity and containing some of the confidential information; and

(iv) joint liability for the personal defendants.

FIRST INSTANCE DECISION

Rajah J found that the defendants had misused the confidential information provided to them by exploiting the business opportunity for their own gain, and in doing so they had also infringed its trade secrets. He dismissed the copyright infringement and joint liability claims. On the question of "public domain", Rajah J made the following findings:

- **Knowledge**: The knowledge required to exploit the opportunity – specifically, how to implement a sanctions-compliant fund to acquire undervalued Venezuelan debt that could not be purchased directly by US nationals – was not widely known in the market, with only ACOF, Illiquidx's own post-JV fund and one other fund established in this space. The opportunity therefore did not constitute general knowledge.
- **General accessibility**: For information to lose its confidentiality, it needs to be <u>*generally*</u> accessible to the public. Despite Illiquidx having circulated newsletters containing much of (but not all) the detail to some 500 people, that information was still not "*generally accessible*", as the information was available to only those who signed up to receive it. The meaning of "public domain" for the purposes of breach of confidence is therefore materially different from "making available to the public" in patent law.

- **Circulation to investors**: Circulation of a potential business opportunity to serious investors without an NDA did not mean the information was now in the "*public domain*", and the court held this to be a necessary risk inherent in generating investor interest. The information remained confined to those investors, and reasonable steps had been taken to prevent its disclosure to competitors.

On the treatment of potential business ideas and opportunities, Rajah J confirmed the following:

- **Particularisation:** Before a court can assess whether information *is* confidential, it must first be identified clearly and precisely. A claim for breach of confidence requires accurate and precise particularisation of the confidential information alleged to have been misused. Vague descriptions of "information" are not protectable.

  The initial failure to particularise its case with sufficient precision had significant costs consequences at first instance. Rajah J observed that there was "a *basic injustice in Illiquidx failing to identify its case and plead it with particularity and precision. Pleadings are there to mark the parameters of the case and inform the other side of the case they have to meet. Vague and expansive pleadings do not do that*". The Court of Appeal confirmed this requirement, holding that a claimant "*must identify with particularity the confidential information which has allegedly been misused*".
- **NDAs**: If an NDA specifies that information must be kept confidential, and the extent and duration of those duties, the courts will not impose additional equitable duties of confidence. The contractual confidentiality obligations in the NDA are therefore the primary and determinative source of the parties' duties.
- **Business opportunities**: A "business opportunity" can constitute protectable confidential information as long as it is suitably well-defined, even where some investors have become aware of the idea through initial marketing materials.
- **Misuse**: The judgment found the defendants were not aware of the business opportunity, and did not have sufficient knowledge or expertise to understand the nature of the business opportunity or how it could be without the claimant's input. The ACOF invested in the same assets that the ACIF could have invested in and used the same strategy set out in the claimant's documents and without access to Illiquidx's confidential information, Altana could not have launched its own fund.
- **'Reasonable steps'**: This was the first substantive judgment to consider the meaning of 'reasonable steps' under Regulation 2 of the Trade Secrets (Enforcement) Regulations 2019, which implemented the EU Trade Secrets Directive in the UK. To the surprise of many practitioners, it was found that the Claimant *had* taken "reasonable steps" to protect its trade secrets, even though it had included much of the information forming those trade secrets in emails sent to potential investors, who had not

signed any NDA. As such, the Court of Appeal's review of this aspect of the judgment had been closely watched by practitioners.

APPEAL

The defendants were granted permission to appeal on three of the four grounds: (1) the interpretation of the "*public domain*" carve-outs in the NDA; (2) the finding that none of the confidential information alleged to have been misused was in the public domain; and (3) whether there had been a misuse of trade secrets.

Disappointingly, the judgment did not address ground (3) on trade secrets. It was common ground that the misuse of trade secrets stood or fell with the contractual confidentiality claim, and on that basis the Court of Appeal confined its analysis to the contractual claim.

Ground 1: Interpretation of "Public Domain"

The NDA defined confidential information to exclude information that "*at the time of supply is in the public domain*" or "*subsequently comes into the public domain other than as a result of a breach of the* [confidentiality] *undertakings*". The Court of Appeal confirmed that the meaning of "*public domain*" in the NDA fell to be determined by reference to the well-established legal test: information is in the public domain when it is "*so generally accessible that, in all the circumstances, it cannot be regarded as confidential*" (AG v Observer Ltd [1990] 1 AC 109). Confidentiality was described as "*a relative, not an absolute, concept*", with the "*true criterion* [of *confidentiality] being not secrecy but inaccessibility*" (*Racing Partnership* Ltd v Done Brothers (Cash Betting) Ltd [2020] EWCA Civ 1300).

The judgment went on to note that unless otherwise stated, the words in a contract are to bear their well-established meaning. If the parties intended "*public domain*" to have another meaning, the NDA should have been drafted as so. The judge dismissed the argument that because "*confidential information*" was interpreted broadly, the "*public domain*" carve-out should correspondingly be read broadly: the two concepts operate independently, and the parties are free to define either more narrowly if they choose to do so.

Ground 2: Was the Information in the Public Domain?

The defendants contended that both the business opportunity and the materials setting out its detail were in the public domain. The Court of Appeal confirmed that the burden of establishing the "*public domain*" defence rests on the defendant.

The Court of Appeal confirmed it would not disturb Rajah J's finding of fact that the "business opportunity" was not in the public domain in 2019, even if the opportunity was expressed at a "*high level of generality*", and that it was a conclusion open to the judge that the sending of those materials to select investors did not make them "*generally accessible to the public*". The judgment also notes that even if Rajah J was wrong to find that the business opportunity at a high level of generality was not in the public domain, it did not undermine the conclusion that the full details of the "*package of information*" were not in the public domain. Whilst many, if not all, of the elements of the package of information might have been available in the market *individually*, they were not otherwise available as a collated, coherent package of information about how investors could exploit undervalued Venezuelan through a sanctions-compliant structure.

COMMENT

This case is useful for illustrating the boundary between proprietary investment opportunity and one that may be freely used by market participants. Two principles emerge with particular clarity.

First, information need not be secret in the traditional sense to attract confidentiality protection. Where individual datapoints or facts *are* in the public domain, a compilation of those components into a coherent and valuable package can still be protected — provided the compiled *package itself* is not otherwise readily accessible in the market. It is not sufficient for a defendant to demonstrate that *some* components are publicly available. If the package can be precisely characterised and the defendant has made use of it (rather than independently arriving at the same conclusions), a breach of confidence claim in respect of that investment opportunity can succeed.

However, the above relates only to the question of *liability*. Quantum is a different matter. In some cases, the difference between the publicly available components and the confidential package may be so limited that damages are constrained, even where liability is established. The *value* of confidential information depends heavily on its content and context. In an investment setting, the value of a trading opportunity can be highly time-sensitive — and potentially very significant to a party with the means and expertise to act on it.

KEY TAKEAWAYS

The judgment provides clear guidance for those preparing and marketing investment opportunities. The following steps should be considered:

- Define "confidential information" in an NDA broadly. Avoid focusing solely on documents and rely on a definition that can be read to mean the package of documents, unwritten communications, and the opportunity itself, taken as a whole.
- Pay attention to the definition of "public domain". NDAs are often signed with minimal scrutiny. Many NDAs contain boilerplate carve-outs that publicly accessible information can retain its confidential character even where it is made up of component parts that are individually in the public domain — provided the compiled package is not freely accessible.

- The NDA should prohibit the *use* of the information (and ideally the business opportunity), and not just its onward *disclosure* to third parties. However, it may be difficult to define the opportunity in a draft NDA without *revealing* it before the NDA has been executed, a challenge sometimes referred to as Arrow's information paradox.
- Implement sensible and proportionate confidentiality arrangements when promoting funds and opportunities, and withhold the 'crown jewel' insights about the opportunity from any marketing materials. Although Arnold LJ did not disturb Rajah J's evaluative assessment of the marketing approach in this case, his judgment suggests that, had he conducted that assessment at first instance, he may have reached a different conclusion. Breach of confidence cases remain intensely fact-specific, and parties in a superficially similar position should not assume they would fare as well.
- The claim was brought under a signed NDA. The court did not hold that recipients of promotional emails owed a freestanding duty of confidence to the sender; it held only that the circulation of those emails did not place the relevant information in the "public domain". To ensure that recipients of investment materials are subject to binding confidentiality obligations, merely marking an email 'confidential' will rarely suffice. Parties should consider additional measures — both practical and legal — including password-protected or otherwise secure methods of information sharing (for example, via a platform that prevents downloading or forwarding), and click-through confidentiality terms.

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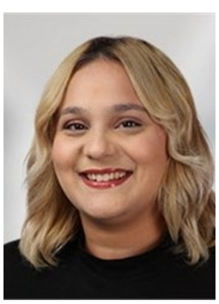

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