

Workplace Investigations

Contributing Editors

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13. Can non-disclosure agreements (NDAs) be used to keep the fact and substance of an investigation confidential?

Hong Kong

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In general terms, NDAs can be used and indeed are commonly used to keep the fact and substance of a workplace investigation confidential. However, NDAs will not be effective in preventing the disclosure of information which is in the public interest or is important for safeguarding public welfare in matters of health and safety. Further, several laws in Hong Kong provide that disclosures as a result of compliance with a requirement made by the relevant authorities will not be treated as a breach of any restriction imposed by contract or otherwise by law.[\[1\]](#)

[\[1\]](#) The Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405), the Organized and Serious Crimes Ordinance (Cap. 455), and the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575)

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Spain

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Yes. NDAs are the preferred instrument to ensure that employees conducting the investigation, as well as those who participate as witnesses or collaborators, will keep the enquiry and its existence confidential.

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Switzerland

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In addition to the above-mentioned statutory confidentiality obligations, separate non-disclosure agreements can be signed. In an internal investigation, the employee should be expressly instructed to maintain confidentiality.

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