

# Employment in Financial Services

## Contributing Editor

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### **14. Are non-disclosure agreements (NDAs) potentially lawful in your jurisdiction? If so, must they follow any particular form or rules?**



#### Brazil

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Yes, non-disclosure agreements (NDAs) are potentially lawful in Brazil. The applicable rules are the same as for any legal transaction: expression of will, legality of the object, and compliance with the law.

As a rule, NDAs are a consequence of professional activity and do not require specific consideration.

Protected information is specific to the contractor (employer) and shared with the employee during the execution of the contract (strategies, customers, commercial secrets, etc).

General information belonging to the employee due to his or her academic training and previous professional experience is not included in NDAs.

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#### Germany

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Under German law, it is permissible to enter into non-disclosure and confidentiality agreements. In practice, NDAs are usually agreed upon in written or text form, although this is not legally required. If drafted for use in multiple cases, NDAs are subject to a particularly strict test to be effective: they must be transparent and may not unduly burden the employee under General Terms and Conditions legislation. NDAs should, therefore, only relate to very limited and specific information.

In practice, NDAs are difficult to enforce as it is the employer who must prove a culpable breach of contract, as well as damages resulting from such a breach. Employers should, therefore, also use other means to ensure data protection and confidentiality, such as properly defining and protecting business secrets under the Business Secrets Act; and implementing technical and organisational measures to limit access to certain information, which may include sharing information only on a need-to-know basis.

## Switzerland

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Non-disclosure agreements (NDAs) are generally lawful in Switzerland. However, NDAs are not regulated by statutory law and therefore do not have to follow any particular statutory form or rule. Nevertheless, most NDAs often contain a similar basic structure.

The core clauses of an NDA concern:

- manufacturing and business secrets or the scope of further confidentiality;
- the purpose of use;
- the return and destruction of devices containing confidential information; and
- post-contractual confidentiality obligations.

As a general rule, it is recommended to use the written form.

To ensure possible enforcement of an NDA in the employment context, the requirements of a post-contractual non-compete obligation (see below) must be met.

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