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Employment in Financial Services

Contributing Editor

Louise Skinner at Morgan Lewis & Bockius

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

Hong Kong

Author: *Charles Mo, Joanne Mok*
at Morgan Lewis & Bockius

Non-disclosure agreements are legally enforceable in Hong Kong. They follow the contract law rules and there is no other particular form or rules. To be enforceable, a non-disclosure agreement must protect information that is both confidential and valuable. There are common exceptions where confidentiality will not apply to certain information, including information available in the public domain, information lawfully received from a third party without proprietary or confidentiality limitations, information known to the employee before first receipt of same from the employer, and information disclosed in circumstances required by law or regulatory requirement.

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Switzerland

Author: *Simone Wetzstein, Matthias Lötscher, Sarah Vettiger*
at Walder Wyss

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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Contributors

🇭🇰 Hong Kong

Charles Mo
Joanne Mok
Morgan Lewis & Bockius

🇨🇭 Switzerland

Simone Wetzstein
Matthias Lötscher
Sarah Vettiger
Walder Wyss

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