

Nishith Desai Associates
Legal & Tax Counseling Worldwide

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Information Technology & BPO Practice

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The Practice

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Information Technology Services (“ITS”) and Business Process Outsourcing (“BPO”) have become some of the most active segments in the world, and India has rapidly emerged as a preferred destination for global corporations seeking to outsource their business processes. ITS and BPO in a global economy presents unique challenges such as issues relating to permanent establishment, transfer pricing, intellectual property, privacy, data protection, security along with the incorporation of the same into various contracts and agreements. We at Nishith Desai Associates (“NDA” or “we”) have developed an expertise and niche in this area and have advised and assisted several global companies on legal, regulatory, tax and protection of intellectual property related issues.

The firm has published a report entitled “Business Process Outsourcing Legal & Tax Issues” that analyzes the offshore BPO market and examines India’s competitive advantages vis-à-vis other countries. We have cultivated the ability to provide creative and workable solutions to our clients by consciously combining industry knowledge, practical experience and intensive legal research. We have a dedicated Information Technology, Communication and Entertainment Laws Practice Group, which focuses on the legal and regulatory issues that arise in BPO and ITS. The Corporate and Securities Law team and the International Taxation team at NDA advises clients on the structuring of their operations in a tax efficient manner while the Technology Law team focuses on formulating comprehensive strategies to help clients leverage their intellectual property, and unlock the value of their intellectual property assets in the current competitive market place. We have a unique expertise in drafting, reviewing and negotiating a diverse range of Intellectual Property and Information Technology agreements.

NDA’s Information Technology and BPO Practice Group focuses on:

- Structuring of investments into India: Advising clients

on various structuring issues involved in investing into India, including determining a tax favorable jurisdiction for investment, permanent establishment, and transfer pricing instruments.

- Regulatory approvals: Obtaining the requisite regulatory approvals for setting up and carrying on operations in India.
- Advising on laws: Advising clients on the protection of intellectual property, information technology, confidentiality, privacy, security, enforcement of foreign awards / judgments, etc.
- Employment Laws: Advising clients on ESOP and other related employment laws including compliance with labour laws, drafting policies and procedures, employment agreements, etc.
- Documentation: Drafting and negotiating term sheets, shareholders, share purchase, joint venture and other corporate Agreements. The group is also involved in drafting and negotiating master service agreements, service level agreements, build-operate-Transfer agreements, software license and distribution agreements such as shrink-wrap and click-wrap agreements, end-user license agreements, reseller agreements, software development agreements, software escrow agreements, software assignment agreements, call center agreements, tele-marketing agreements, technology transfer agreements and other outsourcing agreements.
- Due-Diligence: We also undertake legal due diligence on companies carrying out BPO and ITS, in which our clients are proposing to invest. Our specialized knowledge of this sector helps us in identifying critical issues that a financial or strategic investor in a company engaged in a BPO and ITS space should carefully understand and address. We have carried out legal due diligences of reputed companies on behalf of large international private equity players.

Experience

- Advised one of the world’s leading computer systems companies on routing its investments into India via a tax favorable jurisdiction, in order to set up software development and back office operations.
- Conducted a research study on behalf of a global financial services company, analyzing the legalities

Involved in setting up operations with regard to Medical transcriptions, in-house insurance claims, and various other back office operations.

- Advised a leading international financial services group on setting up their BPO operations in India in a tax efficient manner.

...Experience (cont'd)

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- Advised a .S. private equity investment group on acquiring a stake in one of India's leading BPO companies that provides transaction processing and customer contact services to corporations in the U.S. and the U.K.
- Advised the worlds leading private equity investment firm on its investment in an Indian CRM co-sourcing company, offering integrated customer care services.
- Advised an Indian BPO company that provides remote processing applications, including customer interaction services, business process outsourcing, technical support, and knowledge services on the structuring of its operations, including foreign investments into the company.
- Assisted India's leading Customer Contact Center providing voice-based services in the areas of collections, telemarketing, and customer care, in drafting and negotiating outsourcing agreements. Also advised the client on a dispute resolution matter with respect to a sub-contract services agreement with a U.S.- based company.
- Advised a U.S.-based BPO company providing enterprise content production and repurposing services on intellectual property and employment-related contracts, in connection with its Indian subsidiary.
- Assisted a U.S.-based company that provides human resource outsourcing services to Global 500 companies, in setting up a BPO unit in Mumbai in a tax efficient manner.
- Advised a global vendor of human resource enterprise application software on its Build-Operate and Transfer (BOT) contract with an Indian software services provider for establishing a new, global implementation, development, and support center in Bangalore.
- Negotiated a complete set of software and hardware contracts on behalf of a broadband network software/hardware provider.
- Reviewed software re-seller agreements for an international company entering into a contract with an Indian software company.
- Drafted a software development agreement for an international photography equipment company.

Select Clients

Amazon, Bay View, Broadcom, Bombay Stock Exchange, Chorus Call, Daksh (acquisition by IBM), Directi, Dun & Bradstreet, eBay, Epicenter Technologies, Exult, Expedia Inc., Financial Technologies, Four Interactive Pvt. Ltd., GE Capital, General Atlantic Partners (for investments in Daksh & PCS), Geodesic Information Systems Ltd., Global Trust Bank, GoldenGate Software Asia Pacific Pte. Ltd., , Google, Infospace Inc., I-flex Solutions Ltd., i2 Technologies, Integral Media Services, Kotak Bank,

Kyocera, Larsen Toubro, Leapfrog, Mahindra British Telecom, Miles Software Solutions Pvt. Ltd., Mellon Financial Bank, Netplane, Oak Hill Capital Partners (for investment in EXL), OM Kotak Insurance, PeopleSoft, Prudential, Riverstone, Spectramind, Stock Holding Corporation of India, Times of India Group, Travelocity / Sabre, Telcordia, Vaakya Technologies Pvt. Ltd., Verifone, Verizon, Walchand Cricketnext, Yasu Technologies.

Team

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