



## **Real Estate Investments**

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Practice Statement

## Nishith Desai Associates

*Legal & Tax Counseling Worldwide*

Mumbai • Silicon Valley • Bangalore • Singapore

Nishith Desai Associates (NDA) is a research based international law firm with offices in Mumbai, Bangalore, Silicon Valley and Singapore. We specialize in strategic legal, regulatory and tax advice coupled with industry expertise in an integrated manner.

Core practice areas include Cross-border transactions, Fund Structuring and Investments, Mergers & Acquisitions, International Tax, Dispute Resolution, Corporate & Securities Law, Competition Law, Employment Law and Intellectual Property Law. Our specialized industry niches include financial services, IT and telecom, education, pharma and life sciences, media and entertainment, real estate and infrastructure.

We are differentiated by the quality of our team that comprises lawyers and professionals, with multiple qualifications in business management, chartered accountancy, medical surgery, engineering and company secretaryship. We also have the distinction of being the first Indian law firm to be licensed to practice Indian law by the State Bar of California and the Attorney General of Singapore.

Nishith Desai Associates has been ranked #1 in Tax, Investment Funds and TMT practice by Legal 500 (Asia-Pacific) in 2009-2010. It has also been named by the Pacific Business Press as Asian – Counsel Firm of the Year 2009 for the practice areas of Private Equity and Taxation in India. In the Financial Times – RSG Consulting ranking of Indian law firms in early 2009, we were ranked the highest for ‘Quality’. We are also part of the Asian Legal Business Watchlist as one of the ‘Top 10 firms to watch in 2009’ in Asia – Pacific. The Tax Directors Handbook, 2009 lauded us for our constant and innovative out-of-the-box ideas.

Other past recognitions include being named the Indian Law Firm of the Year 2000 and Asian Law Firm of the Year (Pro Bono) 2001 by the International Financial Law Review, a Euromoney publication. In an Asia survey by International Tax Review (September 2003), we were voted as a top-ranking law firm and recognized for our cross-border structuring work.

Our research oriented approach has also led to the team members being recognized and felicitated for thought leadership. Consecutively for the fourth year in 2009, NDAs have won the global competition for dissertations at the International Bar Association. Nishith Desai, Founder of Nishith Desai Associates, has been named one of the ‘Most In Demand Practitioners’ by Chambers Asia 2009. He has also been ranked No. 28 in a global Top 50 "Gold List" by Tax Business, a UK-based journal for the international tax community.

Our trust-based, non-hierarchical, democratically managed organization that leverages research and knowledge to deliver premium services, high value, and a unique employer proposition has now been developed into a case study and published by John Wiley & Sons, USA in a feature titled ‘Management by Trust in a Democratic Enterprise: A Law Firm Shapes Organizational Behavior to Create Competitive Advantage’ in the latest edition of Global Business and Organizational Excellence (GBOE).

### Real estate sector in India

Real estate is one of the fastest growing sectors in India. Market analysis pegs return from the realty sector in India at an average of 14% annually, with research estimates indicating that the Indian real estate market is expected to grow from the current USD 14 Billion to a USD 102 Billion in the next 10 years. Indian real estate has a huge potential demand in almost every sector, particularly commercial, residential, retail, Industrial, hospitality, and healthcare. Considering the attractiveness of the returns, and the great potential, it is not surprising to see the advent of dedicated real estate funds, floated to tap into the appetite of both domestic and foreign investors.

### NDA's Real Estate Funds/Investments Practice

Nishith Desai Associates (“**NDA**” or the “**Firm**”) is the leading Indian law firm, recognized internationally for its funds practice. We have advised perhaps the largest number of offshore and domestic funds including private equity funds, foreign institutional investors, real estate funds (REITs), mutual funds and hedge funds in connection with their investments in India. Our focus on international tax, and our understanding of the legal and tax regime for funds in other jurisdictions, has enabled us to be at the cutting edge of structuring offshore and domestic funds. Our global network with overseas counsels helps us identify appropriate overseas counsel who can represent the fund's interests in those jurisdictions. Our

independence allows us to work with all service providers, thereby enabling easy integration with a client's existing support eco-system.

Our internal trend assessment procedures led us to study this sector globally, and facilitated the development of our product offerings in this segment, even before the announcement of a relaxation in regulations applicable to this sector. Since, the government started relaxing regulations to attract foreign investments in the Indian real estate sector, we have been in the fore-front of advising clients in setting up real estate funds, and advising them on the Indian tax, corporate and exchange control implications. The Firm today has earned a reputation for developing innovative structures and assisting clients achieve their business objectives, including by way of obtaining various favorable rulings from government, regulatory and tax authorities. Further, the Firm has also helped in developing structures for mezzanine and debt funding for real estate projects to meet with the relatively complex legal, regulatory and tax environment surrounding the sector and especially exchange controls. It also continues to advise several of the real estate funds/entities in respect of their listings on overseas exchanges like AIM, Jersey, London Stock Exchange, Singapore, etc.

We have been advising several of our real estate fund clients on the legal and tax structuring and documentation of their downline investments in real estate sector.

### Our Clients

Some of the real estate funds to which we have acted as Fund counsels include:

- ICICI Ventures - (India Advantage Fund III & IV)
- Indiareit Funds
- Kotak Mahindra Realty Funds
- India Property Fund – The Chatterjee Group
- Kshitij Fund
- RedFort Capital
- Deutsche Bank (RREEF)
- TCG India Property Fund
- Askar

In addition to above, we have also represented several real estate fund clients in their investment deals in India which include (a) Farallon, on the India Bulls-Jupiter Mills deal; (b) Lokhandwala Builders, in the investment made by Trinity Capital into Lokhandwala; (c) Kotak Alternative Opportunities Fund, in their PIPE deal in Sunteck Realty and Infrastructure Limited; (d) Sunteck Group and Indiareit Fund, in their investments in Starlight Systems Pvt Ltd (e) Indiareit Fund, in their real estate joint venture with Pune based Paranjape Developers; (f) Deutsche Bank (RREEF) on structuring of their real estate investment deals in India; (g) Indiareit Fund, in their real estate joint venture with Bangalore based Skyline Constructions (h) Askar Capital, in their investment in Orange Lifestyle City in a joint venture with SKIL Group (i) RedFort Capital in their real estate joint venture with Prestige Constructions Group; (j) Indiareit Fund, in their real estate joint venture with Neptune

Developers; (k) RedFort Capital, in their acquisition of land parcel in Chennai (l) Forum Projects, in their real estate joint venture with Yatra Capital, a EuroNext stock exchange listed real estate fund; (m) Antarctica, in their real estate joint venture with Gramercy, (n) Developer, in setting up and structuring of his multiple SEZs across India; (o) Advising clients with respect to setting up of Singapore REITS.

We have represented companies like Amazon, NetLogic, OmniCell, EFI, SVB, NVidia and Business Objects in leasing of office space, which included negotiations, managing due diligence on title, and drafting and review of the relevant documentation.

### Scope of Services

- Advising on a suitable structure for real estate funds from an Indian legal, tax and regulatory perspective, and undertaking related documentation
- Advising domestic and offshore clients on all corporate and tax related matters related to downline investments in the real estate sector.
- Issuing opinions with respect to eligibility of real estate projects under Press Note 2 of 2005
- Advising, drafting, reviewing and negotiating joint venture agreements, lease and leave & license agreements and share purchase and shareholder agreements, as required for downline investments of real estate funds
- Advising clients on legal and regulatory aspects of acquisition of land, including for township projects

- Co-coordinating title searches, as required
- Advising on certain property related disputes
- Advising clients on implementation of SEZ projects throughout India

#### Core Team

- Siddharth Shah  
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Siddharth heads the Funds practice group at NDA. He has vast experience of working on a variety of funds including domestic and offshore private equity funds, offshore investment funds and mutual funds. Besides the Funds practice group, he is also a member of the firm's M&A and Banking and Structured Finance groups of the Firm and as a member of these groups he focuses on advising clients on corporate and securities law issues and on structuring of inbound and outbound investments.

- Nishchal Joshipura  
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Nishchal is a senior member of the Corporate and Securities Practice at NDA. He has experience of working on a variety of funds including domestic and offshore private equity funds and offshore investments. His practice areas include transfer pricing, international taxation, globalization, structuring of inbound/outbound investments, structuring of offshore

funds, structuring of real estate investments, taxation of e-commerce, exchange controls, corporate and securities laws.

- Kartik Ganapathy  
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Kartik heads the Corporate and Securities Practice of NDA. Kartik's practice areas involve private equity and venture capital investments, M&A, joint ventures and foreign collaborations, and securities law, in addition to general corporate and commercial advice. He has also been involved with various facets of transactions including structuring of investments, fund raising, client acquisition and negotiations.

- Vivek Kathpalia  
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Vivek heads the Commercial Law and Litigation & Dispute Resolution Practice and is a senior member of the Real Estate Practice at Nishith Desai Associates. His areas of specialization include commercial laws, litigation and dispute resolution and real estate. Vivek also heads the Singapore office of the firm.

- Vyapak Desai  
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Vyapak is a senior member of the Corporate and Securities Practice Group, Litigation & Dispute Resolution Practice Group and Fund Practice

Group at the Firm. He has advised clients on several public offerings, M&As, PIPE deals, corporate and securities laws, foreign direct investment and other exchange control laws, corporate issues relating to setting up of private equity funds and offshore investment funds.

- Shafaq Uraizee-Sapre  
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Shafaq is a Senior Associate at NDA and is a senior member of the Real Estate Practice, Litigation & Dispute Resolution, Fund Investment and Technology Groups at the firm. Shafaq's practice includes a variety of transactions with both domestic and international venture capital and private equity funds. She has advised clients on issues concerning the legal aspects of structuring and restructuring investments in India and globally, structuring private equity and real estate investments and mergers and acquisitions across a multitude of sectors. In addition to representing investors, she has also advised various leading real estate developers and companies in this sector. She has led several legal due diligence teams and often renders opinions on issues concerning litigation, arbitration, Indian labor laws and contract law

**RECOGNITION**

- Ranked #1 by Legal 500 (Asia-Pacific) 2009-2010 in Tax, Investment Funds and TMT practice
- Named by Pacific Business Press as the Asian-Counsel Firm of the Year 2009 for the practice areas of Private Equity and Taxation
- Ranked highest on 'Quality' in a recent Financial Times-RSG Consulting survey of Indian law firms
- Listed in Practical Law Company's (PLC) Which Lawyer? Yearbook 2009 as the leading firm in Taxation, and IT & e-Commerce
- Among PLC's recommended firms for Capital Markets, Corporate Real Estate, M&A, IP, Outsourcing, Private Equity, Venture Capital and Telecom
- Listed in the Asian Legal Business Watchlist of 'Top 10 Firms to Watch in 2009'
- Nishith Desai, Founder, ranked No. 28 in a global Top 50 "Gold List" by Tax Business, a UK-based international tax journal
- Recognized by Chambers and Partners as the 'Most In-Demand Practitioners'
- Ranked No. 1 by Asia Pacific Legal 500 in International Tax, Fund Investments, Technology Law, Media Law and Telecom Law
- Nominated for 'Indian Law Firm of the Year' in Asialaw's India Awards, 2009
- Within a decade of setting up, NDA was honored with the 'Indian Law Firm of the Year' and in the next year, with 'Asian Law Firm of the Year (*Pro Bono*)' awards by the International Financial Law Review, a Euromoney publication

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