

Employment & Labour Law

STATEMENT OF CAPABILITY

2011

Nishith Desai Associates

Legal & Tax Counseling Worldwide

Mumbai • Silicon Valley • Bangalore • Singapore • Basel • New Delhi

Nishith Desai Associates (NDA) is a research based international law firm with offices in Mumbai, Bangalore, Silicon Valley, Singapore, Basel and New Delhi. We specialize in strategic legal, regulatory and tax advice coupled with industry expertise in an integrated manner. We focus on niche areas in which we provide significant value and are invariably involved in select highly complex, innovative transactions. Our key clients include marquee repeat Fortune 500 clientele, of which over 60 per cent are US corporations.

Core practice areas include International Tax, International Tax Litigation, Litigation & Dispute Resolution, Fund Formation, Fund Investments, Capital Markets, Employment and HR, Intellectual Property, Corporate & Securities Law, Competition Law, Mergers & Acquisitions, JVs & Restructuring, General Commercial Law and Succession and Estate Planning. Our specialized industry niches include financial services, IT and telecom, education, pharma and life sciences, media and entertainment, real estate and infrastructure.

Our Tax, Investment Funds and Technology-Media-Telecom (TMT) practices have been consistently ranked in tier 1 by Legal 500, while Chambers & Partners have ranked us # 1 for Tax, TMT and Real Estate - FDI. We've received honorable mentions in Asian - Counsel Magazine for Alternative Investment Funds, International Arbitration, Real Estate and Taxation for the year 2010. We have been adjudged the winner of the Indian Law Firm of the Year 2010 for TMT by IFLR. We have won the prestigious "Asian-Counsel's Social Responsible Deals of the Year 2009" by Pacific Business Press, in addition to being Asian-Counsel Firm of the Year 2009 for the practice areas of Private Equity and Taxation in India. Indian Business Law Journal listed our Tax, PE & VC and Technology-Media-Telecom (TMT) practices in the India Law Firm Awards 2009 as also Legal 500 (Asia-Pacific) that has ranked us #1 in these practices for 2009-2010. We have been ranked the highest for 'Quality' in the Financial Times – RSG Consulting ranking of Indian law firms in 2009. 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 fifth year in 2010, NDAites have won the global competition for dissertations at the International Bar Association. Nishith Desai, Founder of Nishith Desai Associates, has been voted 'External Counsel of the Year 2009' by Asian-Counsel and Pacific Business Press and 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. Nishith Desai is listed in the Lex Witness 'Hall of fame: Top 50' individuals who have helped shape the legal landscape of modern India.

Our Employment and Labor Law Expertise

The Employment and Labor Law (HR Law) practice at Nishith Desai Associates addresses all legal, tax and regulatory issues pertaining to an employer - employee relationship. HR Law includes several central (federal) and state specific employment statutes, administrative regulations as well as judicial decisions. In the Indian context, there are a plethora of labor laws, enacted at the central as well at the state level. Each organization is required to be familiar with the applicable HR Laws as ignorance of law cannot be an excuse.

We have successfully leveraged HR Law and tax specialization and rich international experience to develop a vibrant HR Law practice group. The HR Law practice group adopts a business-focused approach in advising

clients, so that the HR strategy of clients is implemented in the most effective manner, along with complying with HR Laws.

The firm approaches projects with an inter-disciplinary HR Law team comprising lawyers, chartered accountants, company secretaries and management graduates, all delivering legal solutions.

The firm advises both domestic and international (including those setting up operations in India) clients on the complex regulatory and legal aspects of employment and labor law in order to enable full compliance with all the applicable laws and tax provisions. The firm is actively involved in drafting and/or reviewing of employment documentation and advising on a wide range of labor law related queries, including structuring of ESOPs, transfer of employees, termination, non-compete issues and the like. The group predominantly represents companies and their management on employment related projects and litigation.

Scope of Services

1. Employment Strategy and Documentation

The HR Law practice group at NDA assists clients in their overall strategy for recruiting and retaining employees. We assist clients in drafting and reviewing employment documentation including offer letters and employment agreements, confidentiality agreements, IP assignment agreements, non-compete and non-solicit agreements, training bonds, consultancy agreements, secondment and deputation agreements, severance and release agreements, etc.

Over the years, we have successfully incorporated industry best practices and customised to the requirements of our clients. We reconcile the 'at-will' employment and 'work-for-hire' concepts with Indian laws.

2. Company Policies / Employee Handbook

Organizations often have a written code of conduct and policies, including those contained in the Employee Handbook. The handbook serves to communicate to its employees the organisation's mission statement, values and practices, as also supports the employment contract by setting out procedures, rules and regulations for the employees within the organisation in its daily operations including dealing with clients/customers.

The HR Law practice group at NDA provides specializes in drafting customized Employee Handbooks to suit the requirements of the clients. The handbook is structured to incorporate precise detailed clauses on standard employment practices including in relation to vacation / leave policies, prohibition of harassment, employment benefits, discipline and grievance, separation, confidential information, intellectual property rights, etc.

3. Labor Laws

Our advice extends to the applicability of various HR Laws in India, both Central and State, including the Industrial Disputes Act, the Employees' Provident Fund Act, Trade Unions Act, Payment of Bonus Act, Payment of Gratuity Act, Contract Labour Regulations, the state-specific Shops & Establishments enactments, etc. to name a few. We also advise our clients on applicability of HR Laws, the obligations and compliances thereunder, and the consequences of non-compliance, issues related to provident fund contributions, payment of gratuity, payment of bonus, superannuation/retirement benefits, termination of employment, hours of work and leave/ holiday entitlement.

4. Structuring of Employee Benefits & Compensation

A key concern of structuring employee benefits and incentives is the tax implications on both the employee and the employer. We advise our clients on the structuring of a tax-efficient compensation package.

"... (NDA) possesses a buoyant human resources department that advises on employee benefits and the structuring of tax-efficient compensation packages."

Tax Directors Handbook 2009, India

Through our expertise in employee taxation, we also provide legal and tax advice to senior level employees for negotiating the compensation structure. We also specialise in advising on taxation of internationally mobile executives.

5. Stock Options

We advise clients on structuring their equity-based employee compensation plans to attract and retain best talent. We structure the assumption of stock options as part of M&A transaction, which is fairly complex in India especially in view of the several guidelines/regulations which regulate the issue of stock options by an Indian company or by a foreign company to Indian employees.

NDA's founder, Mr. Nishith Desai, was a member of the Committee set up by the Securities and Exchange Board of India to evolve the guidelines in relation to employee stock options and purchase plans, which are now in operation in India

6. Guidance in Employment Termination/ Downsizing

India does not envisage an "at-will" employment relationship. We therefore advise clients on strategies for employment termination, downsizing and reduction in force. This includes advising on applicable labour laws and employment laws, apart from guidance on regulatory requirements mandated for employers. We understand that the interest of the employer should be well secured in the event of termination of the employee's employment, for which purpose we ensure that clauses on confidentiality, post employment non-solicitation, data protection are adequately drafted.

7. Advising in Relation to Transfer of Employment

In cases where there is a transfer of one undertaking to another by way of merger/amalgamation/sale of assets or otherwise, issues such as the transfer of employees of the transferor to the transferee creates certain legal complications. We advise clients on the various labour law implications arising out of such transactions and assist clients in structuring such transactions in a manner so that the transfer of employment complies with all statutory requirements.

8. HR Audit (Legal)

We conduct periodic HR Law audits for our clients. The audit typically encompasses appraisal of the level of compliance with applicable HR Laws, taxation laws and corporate laws relating to hiring/ firing of employees, terms of employment, employee compensation, stock option plans, to name a few. It also includes review of the employment-related documentation and the policy and procedure manual of the company, especially with respect to such issues as confidentiality, assignment of intellectual property and non-competition. The legal HR Audit enables us to suggest measures for legal process re-engineering.

9. Immigration Law

We represent our clients in employment related Indian immigration matters. Our immigration law assignments include advice to companies and employees who wish to come to India on deputation, secondment or on employment.

10. Employment Litigation

While a few years back employment litigation was not very prevalent, the scenario is undergoing rapid change. We have represented several clients in employment litigation cases. Our service includes advising clients on the litigation strategy, drafting and issuing legal notices, responding to legal notices, drafting claim documents and co-ordinating with local counsel to pursue litigation in the appropriate courts across India.

Representative Clients

- Advent International
- Agami Systems
- Alphion Corporation
- Amazon.com
- Arcot Systems
- Aricent
- Aspect Software
- Attachmate
- Avendus Capital
- Azanda Networks
- Aztec Software Inc
- Atrica
- Affiliated Computer Services
- Artisan Components
- Battery Ventures
- Beecem, Bristlecone Ltd
- Broadcom Corporation
- Business Objects
- BNY Mellon
- Bentley Systems
- Candover
- Centillium Communications Inc
- Chubb Insurance
- Cisco Systems
- Citrix Systems
- Cleartrail Technologies
- Conexant Systems
- Corio Inc
- Collabnet Inc
- Copal Partners
- Courage Capital
- diCarta Inc
- Daksh
- Deloitte & Touche
- Digital Mandate
- eBay Inc
- Eka Software
- ExlService.com
- Euclid Network Solutions Inc
- Eurokids
- Expedia Inc.
- Flextronics
- Four Interactive
- Fremantle Media
- FutureSoft
- Fair Isaac Corporation
- FirstRain Inc
- Fragomen Global
- GECIS, Global Holdings
- GoAhead Software Inc
- Google
- GlobeOp Financial Services
- Greenfield
- GoldenGate Software Inc
- Garmin Ltd
- GIC
- Government of Singapore Investment Corporation Pte. Limited
- Oracle
- Herman Miller
- Holcim
- i2 Technologies
- iMany Inc
- Informatica Corporation
- Integreon Managed Solutions

- InfoSpace Inc
- Impetus Technologies Inc
- Indiabulls Financial Services
- India Capital Research
- IPSOS
- IPC Information Systems
- ITP Publishing Group
- JP Morgan Services India Private Limited
- Kineto Wireless
- Kyocera Wireless
- Kale Consultants
- KSK Energy Ventures
- Lara Networks
- Light speed Ventures
- Lionbridge Technologies Pvt. Ltd
- Littler Mendelson, Mars Inc
- Tibco Software
- TVS Capital
- Ultra Motor Company
- United Online
- United Overseas Bank
- Veraz Networks Inc
- Merck & Co
- Motive Inc
- Matrix Laboratories
- MoSys Inc
- Maroo Steel
- Netlogic Microsystems
- New York Life
- NexTag Inc
- nVIDIA Corporation
- Omnicell, Open Silicon
- Oak Hill
- Och-Ziff Capital
- One Equity Partners
- Paradigm Geophysical
- PCTel, Inc
- Providian Financial Services
- Prudential UK
- Pi Corporation
- Providence Equity,
- Quinstreet Inc
- Vignette Corporation
- Virtela
- Wipro
- Worldspace
- Washington Mutual Bank
- Walden International
- Riverstone Networks
- Roamware Inc
- RoamWare
- Royal Bank of Scotland Plc
- Sandisk Corporation
- SEEC Inc
- Silicon Valley Bank
- Sonim Technologies Inc
- SonicWALL Inc
- Skillsoft Software
- Speedera Networks
- StemCyte India Therapeutics
- StreamServe Inc
- Solid Core Systems
- Sun Microsystems
- Telcordia Technologies Inc
- Tumbleweed Communications
- Worldquant Research
- Xambala Inc.
- Yasu Technologies
- Zephyr Inc.

Conferences/ Seminars/Publications

Team members have been actively participating as speakers/panelists at several global employment conferences, including:

- International Bar Association Conference on Key Labour, Employment and HR Challenges faced by Businesses with a Global Workforce, New Delhi, February 2010
- CII Seminar on Human Resource & Employee Relations - In the Context of Global Competitiveness,

New Delhi (India), December 2009;

- SHRM Annual Conference, Toronto (Canada), March 2009;
- Conference of the International Bar Association, Buenos Aires (Argentina), October 2008;
- "Essentials of Employment Law, Malaysia and Asia 2008, Ahrals, Malaysia, August 2008;
- Littler Mendelson's "Employer", Littler Mendelson, Phoenix (USA), April 2008;
- India Employment Laws: India, CCH (Wolters Kluwer), Singapore, March 2008;
- Employment Law Asia 2008, Ahrals, Singapore, February 2008;
- How Globalization Will Drive Change in the International Practise of Law: Lessons Learned from one of India's Most Prominent Law Firms, RAND Institute for Civil Justice, Los Angeles, 01 July 2010.
- Seminar on Non - Compete Law, Intellectual Property Rights & Employment Law in India, Mumbai, 10 July 2010;

This active level of participation in global HR Law conferences provides us the unique position to understand the global HR market and employment laws throughout the world. We, in turn, undertake all efforts to incorporate the best global practices while delivering high quality services to our clients.

Some dissertations our team has authored include

- 'Trade Unions Act and State Laws provide legal protection to Trade Unions in India'; Society for Human Resources Management (SHRM) Legal Report, March 2010
- 'Indian Labour And Employment Law Issues In Global M&A And Reorganizations'; International Bar Association's (IBA) Employment and Industrial Relations Law Committee newsletter; April 2009
- India chapter of The Littler Mendelson Guide to International Employment and Labor Law, published by Lexis-Nexis; 2008
- 'Ensure Compliance with Employment Laws in India'; Society for Human Resources Management (SHRM) Legal Report, Oct / Nov2008
- India chapter on 'Business Transfers and Employee Rights', Watson Burton LLP publication
- Indian chapter, Global Counsel Handbook's Labour and Employee Benefits 2004-05, a PLC (UK) publication
- Contributed the India section of the SHRM Global Learning System (for the PHR, SPHR & GPHR certification).

Contacts

- **Gowree Gokhale, gowree@nishithdesai.com, +91 22 6669 5103, +91 98676 40714**
- **Vikram Shroff, vikram@nishithdesai.com, +91 22 6669 5139, +91 98670 31941**

93 B, Mittal Court, Nariman Point, Mumbai 400 021, INDIA Tel: +91 - 22 - 6669 5000 Fax: +91 - 22 - 6669 5001	220 S California Avenue, Suite 201 Palo Alto, CA 94306, USA Tel: +1 - 650 - 325 7100 Fax: +1 - 650 - 325 7300	Prestige Loka, G01, 7/1 Brunton Rd, Bangalore 560 025, INDIA Tel: +91 - 80 - 6693 5000 Fax: +91 - 80 - 6693 5001	Level 30, Six Battery Road, Singapore 049909 Tel: +65 - 6550 9855 Fax: +65 - 6550 9856	Birsigstrasse 18 4054 Basel Switzerland Tel: +41 7937 72979
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Email: nda@nishithdesai.com
www.nishithdesai.com