

# Funds

---

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 providing 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.

---

### **Our Funds Practice Expertise**

Our practice in the funds area evolved with the opening up of the Indian markets in 1991. This first phase of liberalization, however, saw limited categories of foreign investors making investments into India. In 1993, for the first time, Foreign Institutional Investors ("FIIs") were permitted to make portfolio investments in Indian companies. We advised the Bombay Fund, the first FII that was set up to make investments in Indian securities, which was managed by BZW. We acted as Indian counsel to the offshore funds that were floated by several Indian mutual funds. We have represented several offshore funds set up by the Unit Trust of India, one of India's largest mutual funds. In 1994, the first few private equity funds were set up in India. We represented the first offshore private equity fund, 'Indocean', which was jointly set up by the George Soros Group and Chemical Ventures Partners (which later on went on to acquire Chase Manhattan Bank). We also represented other funds like HSBC Private Equity India Fund and Walden

Nikko India Ventures Co. LDC. The structuring for the first offshore infrastructure fund, AIG Indian Sectoral Equity Fund, making investments in India, was also done by us.

After the advent of private equity funds, the market felt a need for domestic venture capital funds. Securities Exchange Board of India ("SEBI") introduced the SEBI (Venture Capital Fund) Regulations, 1996 for regulating domestic venture capital funds. However, there were several ambiguities and conflicts between different sets of regulations introduced, which required legislative clarification. To address these issues, SEBI set up a committee chaired by K.B. Chandrashekar to recommend amendments to the existing regulations, to which, Nishith Desai, the founder of the firm, was invited to be a member of, given the considerable experience in structuring and setting up of funds.

During this time, foreign private equity/venture capital funds also started making substantial investments in India. In order to encourage and keep up the trend, the SEBI introduced SEBI (Foreign Venture Capital Investor) Regulations, 2000 to promote and monitor foreign venture capital funds investing into Indian companies.

Our funds team comprises multi-skilled professionals including lawyers, chartered accountants and management graduates who blend transactional experience and domain industry knowledge in developing creative structures for our clients. Our domain industry knowledge and experience also equips us to give advice on a plethora of business issues and the latest developments in this industry space.

Several Indian investment managers who are looking at raising international funds need to offer tax efficient and regulatory compliant structures to their foreign investors that generally seek not only safety and repatriation of their original investments, but also a tax-efficient way of receiving the gains earned as well. Thus, our focus on international tax and our in-depth understanding of the legal, regulatory and tax regimes for funds in different jurisdictions has enabled us to be at the cutting edge of structuring offshore and domestic funds.

Some of our accolades include:

- Legal 500 (Asia-Pacific) 2009/10 has mentioned Siddharth as "...particularly recommended by clients" for real estate. He is also listed among the highly recommended professionals in India by PLC Which Lawyer? 2009 for capital markets.
- Bijal Ajinkya has been recognized as a leading tax lawyer by Chambers & Partners 2010. Legal 500 2009-10 (Asia-Pacific).

---

### Scope of Services

Some funds that target both, domestic and offshore investors, offering a unified structure requires careful planning in order for the fund to be able to offer similar terms to all its investors. Our global network with a plethora of overseas counsel and administrators help us to identify the most appropriate overseas counsel or administrator who can represent the fund's interests in those jurisdictions keeping the clients' needs and cost consciousness in mind.

Selection of the fund vehicle also requires careful planning and is driven by a variety of considerations as the same would have an impact on the investors in the fund particularly in their home jurisdictions. For instance, a majority of U.S. based investors prefer the fund entity to be structured as a limited liability company as they could be elected to be treated as a "pass-through" for tax purposes in the U.S. However, most European jurisdictions may not recognize a limited liability company. While deciding on the optimum structure for a fund, varied objectives like limited liability for investors, tax efficiency for the investors and the managers need to be considered. To meet these objectives varied entities such as pass-through trusts, limited liability partnerships, limited partnerships, limited liability companies, protected cell companies etc. can be considered. Offshore funds investing in India would require the presence of investment advisors in India to provide them with deal recommendations etc. This gives rise to tricky issues relating to the taxation of the offshore fund in India that would depend on whether the Indian advisor is regarded as a "permanent establishment" of the offshore fund in India. In this regard, we have successfully represented several funds before the Indian Authority for Advance Rulings and have obtained landmark rulings for them.

Once a decision has been taken on the optimum structure for the fund, the same has to be carefully incorporated in the fund documents, including the charter documents for the fund entity, the private placement memorandum, the investment management agreement, the investment advisory agreement, etc. In particular, one would need to keep in mind the "permanent establishment" issues while drafting these documents. The private placement memorandum should also achieve a balance between the risk disclosure requirements and the marketing strategy. We also coordinate with overseas counsel to obtain requisite legends, if the fund is being marketed to investors in those jurisdictions.

Upon completion of the fund documents, we also advise the fund on the local registration requirements. Domestic funds may register themselves with SEBI pursuant to which they are required to comply with certain investment restrictions and other prescribed conditions. Domestic funds are also accorded the pass-through status for Indian tax purposes upon the fulfillment of certain conditions. It is not mandatory for offshore funds to register with SEBI. However, there are certain benefits available to offshore funds that register with SEBI as "foreign venture capital investors" such as flexibility in entry and exit pricing, "Qualified Institutional Buyer" status, etc. Further, with respect to funds seeking to participate in the secondary markets, apart from drafting of the information memorandum which is circulated to the investors of such fund, we have also advised and assisted them in obtaining registration as an FII or an FII sub-account. We also advise funds on a day to day basis from an Indian tax and regulatory perspective in relation to execution of "offshore derivative instruments" including "participatory notes".

Considering the global turmoil and also adhering to the fact that India is largely self-reliant, a lot of domestic investment bankers have started floating funds attracting investors to make investments in the listed securities by way of portfolio management schemes under SEBI (Portfolio Managers) Regulations, 1993. Our commitment to research and understanding of the global trends enables us to constantly bring new concepts such as UCITs, REITs, hedge funds, fund of funds etc. to the Indian fund industry and create structures anticipating future needs of our clients.

Our expertise spreads across various kinds of funds including sector specific funds like technology funds, infrastructure funds, real estate funds, multi-currency funds, debt funds, index-based funds mid-cap funds, regional

funds, funds looking at investing in varied stages of a company from seed stage to late-stage, angel funds, pledge funds, hybrid funds, etc

Thus, we not only do the basic legal exercise of structuring and documentation, but we handhold the investment managers through the process of the entire fund formation exercise starting from working on the concept and structuring to investor negotiations and successful closing of the fund.

---

## Representative Clients

### Private Equity / Venture Capital

- 2i Capital
- AIG Sectoral Equity Fund
- At India Mauritius Limited
- Chrysalis Capital Partners I, LLC
- eIndia Fund (Infinity II)
- Electra Asian Fund LP.
- Hexagram Venture Fund/Hexagram Fund LLC
- HSBC Private Equity Fund
- Jumpstartup II
- India Auto Ancillary Fund
- India Enterprise Fund
- India Advantage Fund I & II - ICICI ventures
- India Advantage Fund V, VI & VII - ICICI Ventures
- Indocean Fund
- Infinity Fund
- IL&FS Project Development Fund
- IL&FS Pan Asia Project Development Fund
- IL&FS Tara India Fund III, LLC
- J.P. Morgan Horizon Tech. Partners I, LP
- SREI Medium & Small Infrastructure Funds
- Maharashtra Urban Infrastructure Fund
- National Venture Fund for Software and Information Technology Industry
- Helion Venture Partners
- NEA-IndoUS Venture Capital
- Sequoia Capital India Investment Holdings III
- Opportunite SA
- Yatra Capital
- KSK Energy Venture
- BTS India Private Equity Fund
- Indian Media Fund
- Asian Future Fund
- Yes Food & Agri Business India Fund
- India Lifesciences Fund I
- JM Financial India Fund
- JM Financial India Fund I Limited
- NovaStar
- Small is Beautiful
- TCW-ICICI
- UTI Ventures India Ascent Fund
- Walden Nikko
- Westbridge Capital Partners I & II
- Tata Capital Special Situations Fund
- Aditya Birla Private Equity Fund
- India Venture Trust
- Zephyr Peacock Indian Fund – II

### Real Estate

- India Advantage Fund III & IV - ICICI Ventures
- Kotak Mahindra Realty Fund I, II & III
- India Property Fund – The Chatterjee Group

- Indiareit Fund - I, II & III
- RE Capital India Fund
- Redfort Capital
- Kshitij Fund - Future Group
- Deutsche RREEF
- Prudential-ICICI PMS
- IL&FS India Realty Fund II LLC
- Milestone Fund LLC

**Others**

- SBI Resurgent India Investment Fund
- ICICI-India Optima Fund
- Arisaig India Fund Limited AXA
- Development World Markets
- DSP India Opportunities Fund
- Franklin Templeton India Offshore Funds
- UTI - India Index Fund
- UTI - India Access
- UTI - India Debt Fund
- UTI - India IT Fund
- IL&FS - India Discovery Fund
- Indo Asean Microcap Fund Ltd.
- Indus Fund
- ING Group N.V.
- Kuvera Fund
- Nicholas Applegate
- New York Life
- New York Life Insurance
- Indea Absolute Return Fund
- Prudential India Opportunities Fund Limited
- Ultra India Fund Limited-Edelweiss
- Kotak India Focus Fund
- TCG Indiastar Fund
- India Max Investment Fund Limited
- Sandstone Capital India Fund LP
- Quantum Endowment Fund N.V.
- Scwhendimann
- Q India Equity Fund
- TATA India Opportunities Fund
- IDFC Infrastructure Opportunities Fund
- The India iCapital Fund
- Tricolor India Fund
- Voyager India Fund LP
- Winstar India Funds
- Ambit Capital Frontier Fund
- Clareville India Capital Fund
- Cloudleap Partners International I. L. P.
- Australia Opportunity Fund I.L.P.

**Contacts**

- **Siddharth Shah, [siddharth@nishithdesai.com](mailto:siddharth@nishithdesai.com), +91 22 6669 5133, +91 98670 32305**
- **Bijal Ajinkya, [bijal@nishithdesai.com](mailto:bijal@nishithdesai.com), +91 22 6669 5160, +91 98670 32308**
- **Kishore Joshi, [kishore@nishithdesai.com](mailto:kishore@nishithdesai.com), +91 22 6669 5136, +91 98670 31943**
- **Vikram Shroff, [vikram@nishithdesai.com](mailto:vikram@nishithdesai.com), +91 22 6669 5139, +91 98670 31941**
- **Abhay Sharma, [abhay.sharma@nishithdesai.com](mailto:abhay.sharma@nishithdesai.com), +91 22 6669 5124, +91 90040 57125**

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	Leve Six B Sing: Tel: +65 - 6550 9855 Fax: +65 - 6550 9856	Email: <a href="mailto:nda@nishithdesai.com">nda@nishithdesai.com</a> <a href="http://www.nishithdesai.com">www.nishithdesai.com</a> Tel: +41 7937 72979
--	---	--	--	--