

Information Technology & BPO Practice

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 Information Technology & BPO Practice Expertise

Information Technology Services ("ITS") and Business Process Outsourcing ("BPO") are here to stay and are an integral part of today's globalized world. 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, have developed an expertise and niche in this area and have advised and assisted several global companies on legal, regulatory, tax and matters in relation to protection of intellectual property.

NDA has cultivated the ability to provide creative and workable solutions to 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 ITS and BPO sector.

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.

Our 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, and is regarded as a virtual ready reckoner from a legal and a tax perspective.

NDA has been ranked as one of the leading law firms in India by the Practical Law Company in the area of Telecommunications and Information Technology. It has also been rated as the number one law firm in India in the area of Telecommunications, Media and Technology by the Asia Pacific Legal 500.

- Chambers & Partners has ranked us # 1 for TMT.
- IFLR : Winner of Indian Law Firm of the Year 2010 for Technology-Media-Telecom (TMT).
- Nishith Desai, Founder of Nishith Desai Associates, voted 'External Counsel of the Year 2009' by Asian-Counsel and Pacific Business Press.
- Awarded by Indian Business Law Journal - India Law Firm Award 2009 for Telecom-Media-Technology practice.
- 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.
- Listed in the Asian Legal Business Watch list of 'Top 10 Firms to Watch in 2009'.
- Recognized by Chambers and Partners as the 'Most In-Demand Practitioners'.
- Ranked No. 1 by Asia Pacific Legal 500 in, Technology Law, Media Law and Telecom Law.

Scope of Services

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 employment laws including compliance with labour laws, drafting policies and procedures, employment agreements, etc in relation to the IT and BPO sector.
- 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-warp 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.

Representative Clients

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| • Amazon - | • Google |
| • Bay View | • Holcim |
| • Broadcom | • Infospace Inc |
| • Bombay Stock Exchange | • IndiaLinks |
| • Compunetix | • i2 Technologies |
| • Chorus Call | • Integral Media Services |
| • Daksh (acquisition by IBM) | • Intuit |
| • Directi, | • Inter Connected Stock Exchange |
| • Dun & Bradstreet | • Intellectual Ventures |
| • eBay | • Integreon |
| • Expedia Inc | • Imergent Inc. |
| • Flextronics | • Impetus |
| • Four Interactive Pvt. Ltd | • Kotak Bank |
| • GE Capital | • Kyocera |
| • General Atlantic Partners (for investments in Daksh & PCS) | • Larsen & Toubro |
| • Geodesic Information Systems | • Leapfrog |
| • Global Trust Bank | • Mahindra British Telecom |
| • GoldenGate Software Asia Pacific Pte | • Miles Software Solutions Pvt. Ltd |
| | • Mellon Financial Bank |
| | • Mphasis |

- Netlogic
 - Netplane
 - Oak Hill Capital Partners (for investment in EXL)
 - Oracle India
 - OM Kotak Insurance
 - PeopleSoft
 - Prudential
 - Sabre
 - Salesforce
 - Spectramind
 - Stock Holding Corporation of India
 - Times of India Group
 - Travelocity
 - Telcordia
 - Vaakya Technologies Pvt. Ltd
 - Verifone
 - Verizon
- The nature of our work is almost always towards solving a complex legal issue in the IT space. Instances of our advisory work include the following:
 - Canaan VIII Mauritius (“Canaan”) along with individual investors made a VC investment by participating in the first round of fund raising by MXC Solutions India Private Limited (“MXC”). MXC, a Mumbai-based company provides an online platform to facilitate transactions in the automobile sector.
 - Advising 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.
 - Advised a leading international financial services group on setting up their BPO operations in India in a tax efficient manner.
 - 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 world’s leading private equity investment firm on its investment in an Indian CRM co-sourcing company, offering integrated customer care services.
 - 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 contracts, in connection with its Indian subsidiary.
 - Assisted and undertook project management for a renowned multinational software company in relation with its acquisition of a US based technology company.
 - 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.

- Drafted a software development agreement for an international photography equipment company.
- Conducting 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.

Contacts

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