

Joint Ventures

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 Joint Ventures Expertise

The Joint Ventures (JV) Practice of Nishith Desai Associates is a unique blend of expertise arising from a deep understanding of domestic laws with vast international cross-border experience. We are geared to advise clients on all facets of joint ventures (JVs) – investment strategies, tax and corporate structures, investment documentation, compliances, IP licensing and strategy, franchising and exits including acquisitions and third party sales.

We represent international and Indian companies that seek to utilize the advantages of competitive operating costs in India in order to leverage their technologies and to take advantage of the burgeoning Indian domestic market; and have been engaged as counsel in a variety of industries. IT, biotechnology and the manufacturing sector are some of the more recent sectors we have involved in. Our structures for investment and operations from both regulatory and tax perspectives, including the extraction of technology payments are some of the most innovative ones in the JV space.

Intensely research-based, we have invested significant resources on research and knowledge dissemination through on comparative studies on international laws and practices and have written several research papers such as *'Joint Ventures in India'*, *'Doing Business In India'*, *'Mergers and Acquisitions in India'* and *'Globalization'*. Our hotlines are newsletters on contemporary subjects of interest to the legal and business fraternity and are extremely popular and topical.

Our focus on cross-border legal and regulatory issues has given us an in-depth understanding of the various issues that arise when a company seeks to commence a JV in India, ranging from the conflicts between the corporate law requirements, the double taxation issues that arise in connection with the returns that international investors get on their investments and other complex issues.

We have a strong industry and business focus and have mapped and studied several sectors such as Pharma and life sciences, Telecom, IT, Media and Entertainment, heavy industry and manufacturing. We integrate this knowledge with our expertise in providing strategic legal, regulatory and tax advice. We are, therefore, equipped to provide holistic solutions to clients based on our practical experiences and knowledge of international laws such as tax law, foreign practice regulations, foreign investment regulations, sector specific restrictions and regulatory requirements as well as international commercial documentation and practices. We seek to add value to our clients and the projects at all stages - leading from planning to the initiation and culminating in the execution of the deal.

- Devising unique and commercially viable investment strategies for the entry of foreign companies into India
- Creating and implementing innovative and effective structures for JVs including the use of intermediary jurisdictions
- Incorporation of the appropriate JV entity including all corporate compliances involved therein
- Conducting a legal and corporate due diligence exercise on any existing entities including proposed partners or investee companies
- Drafting the investment documentation including joint venture agreements, shareholders' and share subscription/purchase agreements
- Assisting in counterparty negotiations or providing advice for negotiations as preferred
- Providing advise relating to licensing or assigning intellectual property to the JV company, including appropriate documentation and tax structures for the extraction of IP income
- Advising the client on human resource laws including assistance in drafting appropriate employment documentation and ensuring compliance; and

- Advising on exits including by way of sales, buyouts and acquisitions, including post - acquisition cooperation arrangements.

Deal Experience

- Merck & Co., Inc. and The Wellcome Trust, a UK based charity have established a JV in India. The Merck subsidiary and The Wellcome Trust will gradually invest a sum of UK£ 45 million each (approx US\$ 74 million each) over a period of the next seven years in the Indian JV entity, thereby acquiring a stake of 50% each in the entity. We acted as legal counsel to Merck & Co., Inc
- Prysmian Cavi E Sistemi Energia S.R.L., a global player in the industry of high-technology cables and systems for energy and telecommunications, acquired an equity stake of 51% through a combination of share purchase and share subscription in Ravin Cables Limited at a consideration of approximately Rs. 2,000 million. We acted as legal and tax counsel for Ravin Cables Ltd. in this transaction
- Acted as the legal counsel to DBS Bank Ltd., Singapore (Singapore's largest bank) in the USD 50 Million acquisition of a 37.5% stake in Cholamandalam Finance and Investment Company Limited an Indian publicly listed company, engaged in non-banking financial services, and assisted DBS Bank with deal structuring, legal due diligence, deal documentation, negotiations, open offer under the applicable Takeover Regulations and advice on a host of legal, regulatory and tax issues
- Advised in a JV between an international stem cell research company, an Indian hospital major and pharmaceuticals major to launch a stem cell bank in India
- Advised a major pharmaceutical and biotechnology company in a joint venture to manufacture and market life saving vaccines in India
- Acted for Reliance BIG Entertainment in various JVs with various production houses
- Acted for Gala Brush Limited in their JV with Freudenberg Household Products division, a part of the Freudenberg group
- We acted as transaction counsel for the buyout of an Indian JV by a major US based web accessories manufacturer
- Acted for a major mutual fund distributors in India in their JV with a leading stock broking house in India
- Acted as counsel to both Dichtungstechnik Wallstabe & Schneider GmbH & Co. KG and Deshmukh Rubber Works Private Limited, the flagship company of the Divekar Group, in their joint venture to engage in the business of manufacture and sale of automotive components

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