

# Infrastructure & Project Finance

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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 reputed 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.

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### **Our Infrastructure & Project Finance Expertise**

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The Infrastructure & Project Finance Practice Group (the "**Group**") at Nishith Desai Associates ("**NDA**" or the "**Firm**") has an impressive portfolio of experience, be it the drafting of India's first comprehensive legislation facilitating infrastructure development through private sector participation or the first take or pay agreement in the petroleum sector, to name a couple. NDA has advised various government entities, regulators, developers and financiers on infrastructure projects and policy. The Firm has been working directly with the Government of India, State Governments and various government bodies in the infrastructure development space. The firm has also advised various private sector players, both domestic and international, in financing, investing and developing infrastructure

projects. NDA has developed an expertise and niche in this area by capitalizing upon its comprehensive, innovative and pragmatic approach, consciously combining industry knowledge, practical experience, and intensive legal research.

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.
- Nishchal has been recommended by PLC Which Lawyer? 2009 for the real estate practice.

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## Scope of Services

### INDUSTRY ADVISORY

Based on an in-depth study of the industry, the opportunities, challenges and the commercial legal framework, we advise our clients on overall industry perspective, deep-dive studies on topical industry issues, entry strategies and comprehensive legal and tax structuring advisory to cater to incisive plans in particular industry sectors.

### POLICY ADVOCACY

The research-based approach and in-depth domain knowledge in each of the industry verticals enables us to write and comment on the policy initiatives of the Government of India and the various State Governments. The firm recognizes its role as a responsible organization and contributes regularly to the successful and efficient policy formulation and implementation by raising significant policy issues and suggesting modifications from time to time.

### PROJECT ADVISORY

Project advisory is at the core of the group. We deal with the full spectrum of project advisory, right from project conceptualization, pre-concession advisory, concession advisory, advisory during the life of the project and project dispute resolution.

**Project Conceptualization:** The firm advises both, private organizations and the Governments, during initial stages of project concept by leveraging its sector knowledge to advise on probable issues that are likely to emerge, policy formulation and comparative study to form the basis of tender documentation or project pitches in the form of Swiss challenges.

**Pre-Concession Advisory:** The firm renders legal and tax advisory services to *the entire range of participants* in a project, i.e. Government or public authority, project sponsors, lender/ investor consortium, contractors, subcontractors, project equipment suppliers, project service providers. The SiG (Special Interest Group) has comprehensive and intricate legal and tax related advising capability on issues relating to pre-concession stage, project structuring to minimize tax load on the project and the related documentation like tender bidding and back-to-back arrangements.

**Concession Advisory:** Award of concession is a time-bound exercise and involves extensive negotiations and consequent documentation. The firm advises the entire range of participants in a project on issues and

documentation involved during the process of grant of concession. In particular, the Firm is adept in drafting and negotiating Term Sheets, Shareholders', Joint Venture, Engineering Procurement and Construction (EPC) Contracts, State Support Agreements, Concession Agreements, Build-Operate-Transfer (BOT), Build- Own-Operate (BOO), Built-Own-Operate -and- Transfer (BOOT) Agreements, Operation and Maintenance Contracts, Billing and Services Contracts, Construction and Supply Contracts, Land Lease Agreements and other agreements that are integral to the infrastructure & project finance space.

**Post-Concession Advisory:** The firm advises on structures, options, issues and documentation relating to the stage after grant of concession to the project sponsors, which includes back-to-back arrangements, time-bound commitments, fulfillment of concession conditions and issues involved in the execution of the project from time to time.

**Project Dispute Resolution:** The firm has a well-established dispute resolution practice with noteworthy cross - border dispute resolution expertise. NDA's international tax practice specializing both in tax structuring and tax dispute resolution has been consistently ranked as No.1 in India.

#### **PROJECT FINANCE ADVISORY**

The SIG (Special Interest Group) has extensive expertise on providing advice on equity and debt (senior & mezzanine) financing of infrastructure projects. The Firm has represented lenders and borrowers in several project finance deals and has also been involved multilateral grant projects. NDA has been the numero uno law firm when it comes to funds advisory ever since the space was conceptualized in the early 1990s. The Firm is credited with advising on innovative project financing structures and has advised prominent institutional and private equity funds, Municipal Bodies, State Governments and Multilateral Institutions on the formation of infrastructure funds for facilitating and financing project development activities.

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#### **Representative Clients**

An illustrative list of projects we have rendered legal services for is as below:

- We advised the State Government of Andhra Pradesh, India regarding the development of a Greenfield International Airport Project on a BOO basis near Hyderabad. NDA drafted the State Support Agreement, Share Holders' Agreement and Land Lease Agreement and negotiated and finalized the same with the private developer and also assisted in negotiating the Concession Agreement with the Government of India and the Airports Authority of India. The project cost was estimated at about USD 250 million.
- We rendered advise to the State Government of Andhra Pradesh on the development of an all weather,deep-water port at Gangavaram in the State of Andhra Pradesh on a PSP basis at a cost of about USD 500 million to cater to the present requirements of industries located in the hinterland and the future requirement for the proposed Special Economic Zone, which will be located at a distance of 20 kms from the port. The Firm assisted the Government of Andhra Pradesh in negotiating drafting and finalizing the Share Holders Agreement of the concessionaire company, the State Support Agreement and the Concession Agreement with the private developer. The Firm has advised the Financial Institutions Reform and

Expansion Project ("**FIRE-D**"), a joint collaboration between Government of India and USAID, for the institutionalization of the Shahad- Temghar ("**STEM**") Water Authority which was originally constituted under a World Bank project in the state of Maharashtra. The Firm has drafted a proposal for the structure, management and control of the new entity, redefining its scope of work and legal status.

- We acted as counsel to the Medium and Small Infrastructure Fund floated by SREI Venture Capital Limited, a part of the SREI International group, a significant player in the Infrastructure sector. This USD 11 million fund has been established to facilitate development of small and medium scale industries in India.
- We assisted in drafting the Maharashtra Infrastructure Development and Support Act for the State of Maharashtra. The legislation aims at facilitating comprehensive private sector participation in infrastructure development projects in Maharashtra, while adequately addressing the concerns of all stakeholders, such as users, project affected persons, investors, developers, and governments and strives to restore investor confidence in the sector.
- We have advised the State Government of Maharashtra and Mumbai Metropolitan Regional Development Authority on formation of a Maharashtra Urban Infrastructure Fund ("**MUIF**") for facilitating project development activities of Municipalities and other government agencies. The MUIF is an initiative under the FIRED project, involving several institutional investors, such as IDFC, ICICI, SICOM, established to extend guarantees to municipal corporations while raising funds from the market by issuing bonds, advice municipalities about various projects and help in preparing projects reports. MUIF will also serve as a nodal agency right from the stage of formulating the project to its management, operation and monitoring.
- We advised the investment bank engaged by ONGC on the applicable tax considerations in connection with ONGC's bid to acquire certain exploration & production (E & P) blocks off the Indonesian coast from Itoshu. The Firm has advised the Sangli Municipal Corporation on a proposed water project, regarding the procurement of the developer and for drafting the RFQ, RFP and the other documents relating to the procurement process. Intensive study of governmental procurement processes in several countries was undertaken while drafting and finalizing the documentation of the said procurement process.
- We assisted the drafting the Andhra Pradesh Infrastructure Development Enabling Act, 2001 for the State Government of Andhra Pradesh, the first comprehensive legislation of its kind in India aimed at providing a facilitative framework for growth of infrastructure projects on a PPP basis. This legislation, inter alia, lays down transparent methods of procurement, provides for a single window clearance through the specially created Infrastructure Authority for all State level approvals and provides for a facilitative administrative and dispute resolution mechanism.
- We advised Sumitomo Corporation, a leading international heavy engineering corporation, on the structuring of various EPC contracts in India. We have also been involved in advising Sumitomo in its tax litigation and is currently representing them in appellate tax proceedings.

- We have been extensively involved in the structuring of the India Project Development Fund promoted by IL&FS Venture Corporation, a leading infrastructure-financing group.
- We has been extensively involved in the preparation of a comprehensive study for the European Commission on the Market Access Barriers in the Telecommunications sector in India, besides advising the State Bank of India on the financing of the Birla AT&T telecom project.
- We advised Petronet India Limited, the first common carrier pipeline company in India and assisted the drafting of the country's first take or pay agreement in the petroleum sector, and other agreements such as the subscription agreement and services agreement.
- We advised IL&FS on the financing of the USD 250 million, Tirupur Water Project, the first BOOT water and sewer system in South Asia..The project has been described as the first public private sector partnership in the country. IL&FS developed the project with USAID.
- We have prepared a white paper for the Global Information Infrastructure Commission, analyzing the weaknesses of the existing legal framework in the context of e-commerce. The paper examines some issues and contains suggestions for improvement in some significant legal areas.
- We were advisors to WorldTel, a billion dollar fund set up by the International Telecommunications Union for investing and developing telecom projects in India, on its IT related projects and assisted the negotiation, drafting and finalization of the memoranda of understanding with various governments and the joint venture agreements with the State Government of Tamil Nadu and Reliance.
- We advised the Ahmedabad Municipal Corporation on constitutionality of municipal corporations' raising funds through issue of debt securities such as Munibonds.
- We advised MEASAT, a prominent satellite communications company on its foray into satellite television and radio broadcasting services as well as Internet services.
- We were advisors to the National Highway Authority of India, a Government of India body, for its corridor management, road maintenance, tolling of national highway and review of draft concession and toll franchise agreements for the Jaipur-Kotputli road. We assisted the development of the legislative framework for privatization of roads.
- We advised the Pune Municipal Corporation on various issues relating to its water supply and sewerage management projects, including restructuring prior to private participation in water supply and sewerage management, processing tenders, advice on drafting the BOT contract, Operation and Maintenance Contract, Billing and Services Contract and Construction and Supply Contract, etc.

- We have been advisors to India's leading Financial Institutions on their investment in Iridium, the first Global Mobile Personal Communications by Satellite system.
- We advised AIG Indian Sectoral Equity Trust and IL&FS in respect of their divestments from certain infrastructure companies.
- We were advisors to Bechtel, a pre-eminent organization in the infrastructure space, on several Indian projects including the Dabhol power project and the Reliance Petrochemical complex and structuring of contracts for Reliance Petroleum Limited's refinery in Jamnagar.
- We advised a private equity investor, 2iCapital, on its investment in a hydropower company in Southern India, wherein the assignment included due diligence, deal structuring, negotiation and closing of the transaction.
- We acted as Indian counsel to the 3i Capital India Infrastructure Fund. This Fund raised USD 1.2 billion and the Fund has been established to apply the successful investment strategy of 3i's global infrastructure business to the rapidly growing Indian infrastructure market. The Fund intends to build a balanced portfolio of infrastructure investments in India.
- We acted as counsel to the India Infrastructure Opportunities Fund advised by a wholly owned subsidiary of Infrastructure Development Finance Company Limited ("IDFC"). IDFC is the premier institution in India engaged in infrastructure advisory and financing. IDFC was established in 1997 by the Government of India along with some of the large Indian and international public and private institutions such as ICICI Bank, Industrial Development Bank of India Limited, Government of Singapore, Government of Switzerland and the International Finance Corporation. This open ended fund has been established to achieve capital appreciation by primarily investing in a diversified portfolio of primarily listed equity and equity-related securities in India of companies which are operating primarily in the infrastructure sectors.
- We acted as counsel to Axis India Fund floated by Axis Private Equity. This fund seeking to raise USD 400 million has been established to make growth-capital investments in mid-stage infrastructure -related companies.
- We were advisors to the State Government of Kerala in connection with the initial feasibility study of the Vizhinjam Port.
- We advised the Mumbai Port Trust in connection with the Sagarmala project.
- We advised Eastern Energy Limited in connection with the establishment of a proposed 1000 MW power project in Jharkhand.
- We advised ISPAT Industries Limited in connection with the MERC's Draft Captive Power Policy.

- We advised ISPAT India in connection with MSEB Proposal for tariff revision to ensure compliance with the provisions of the Electricity Act, 2003.
- We advised Jain Energy in connection with Foreign Investment into Power Sector.
- We advised Tata Power Limited in connection with its FCCB issue.
- We advised KSK Energy Ventures in connection with the “Captive Generating Plant” under Electricity Act, 2003

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