

# Real Estate Investments

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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 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.

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### **Our Real Estate Investments Expertise**

Nishith Desai Associates (NDA) has been recognized internationally for its specialization in structuring real estate funds and advising on real estate investments from a legal, tax and regulatory perspective. We have advised a significant number of offshore and domestic funds including private equity funds, foreign institutional investors, real estate funds (REITs), mutual funds and hedge funds in connection with their investments in India. Our focus on international tax and our understanding of the legal and tax regime for funds in other jurisdictions have enabled us to be at the cutting edge of structuring offshore and domestic funds. Our global network with overseas counsel helps us

identify appropriate overseas counsel who can represent the fund's interests in those jurisdictions. Our independence allows us to work with all service providers, thereby enabling easy integration with a client's existing support ecosystem.

Our research based approach and internal trend assessment procedures have led us to study this sector in great detail, and facilitated the development of our product offerings in this segment. Ever since the Government of India began relaxing regulations to attract foreign investments in the Indian real estate sector, we have been in the forefront advising clients in setting up real estate funds, and advising them on the Indian tax, corporate and exchange control implications.

We have today has earned a reputation for developing innovative structures, obtaining favorable rulings from Government, regulatory and tax authorities and assisting clients achieve their business objectives. We have also helped in developing structures for mezzanine and debt funding for real estate projects to meet with the relatively complex legal, regulatory and tax environment surrounding the sector and especially exchange controls, and continue to advise real estate funds/entities with respect to their listings on overseas exchanges like AIM, Jersey, London Stock Exchange, Singapore, etc.

We also advise fund clients on the legal and tax structuring and documentation of their downline investments in the real estate sector.

In addition to presenting papers at international and reputed seminars and conferences, our Real Estate team has an established track record of publishing thought leadership articles in this space. Our research on '**Real Estate Fund Investments**' has been extremely well received. Other specific papers in the context include a detailed report on '**Doing Business in India**', '**Globalization**', '**Joint Ventures in India**' and several other incisive and detailed analyses on law and industries. Our hotlines are newsletters on contemporary subjects of interest to the legal and business fraternity and are extremely popular and topical.

We are ranked in Band 1 by Chambers and Partners for the real estate practice. Legal 500 (Asia-Pacific) 2009/10 has specifically recognized Siddharth Shah, Partner in charge of the Real Estate practice as "...particularly recommended by clients" for real estate. Nishchal Joshipura, head of our Real Estate Investment practice has been recommended by PLC Which Lawyer? 2009 for the real estate practice

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### Scope of Services

- Advise related to the creation of a suitable structure for real estate funds from an Indian legal, tax and regulatory perspective, and undertaking related documentation
- Advising domestic and offshore clients on all corporate and tax related matters related to down line investments in the real estate sector
- Issuing legal opinions with respect to eligibility of real estate projects under the latest consolidated FDI Policy
- Advising, drafting, reviewing and negotiating joint venture agreements, lease and leave & license agreements and share purchase and shareholder agreements, as required for down line investments of real estate funds
- Advising clients on legal and regulatory aspects of acquisition of land, including for township projects
- Coordinating title searches, as required
- Advising on certain property related disputes
- Advising clients on implementation of SEZ projects throughout India

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**Representative Clients**

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A list of representative clients is as follows.

- Forum Projects
- HDFC Asset Management Company
- ICICI Ventures
- Indiareit Funds
- Kotak Realty Funds
- Kshitij Fund (Future Group)
- RedFort Capital
- Deutsche Bank (RREEF)
- IL&FS India Realty Fund II LLC
- Milestone Fund LLC
- Lokhandwala Infrastructure
- Neptune Developers
- Sunteck Realty
- Tata Realty and Infrastructure Limited

Our role in real estate deals includes the following -

- Kotak Alternative Opportunities (India) Fund, in their PIPE deal in Sunteck Realty and Infrastructure Limited
- Kotak Alternate Opportunities (India) Fund in Starlight Systems Private Limited
- Kotak Alternate Opportunities (India) Fund and Milestone Capital in their investment in Ultra Space Developers Private Limited, a company owned by Wadhawan Group
- Tata Realty and Infrastructure Limited in their acquisition of a real asset in southern India
- HDFC Asset Management Company in their investment in a Pune based developer
- RedFort Capital in their real estate joint venture with Prestige Constructions Group
- Sunteck Group and Indiareit Fund, in their investments in Starlight Systems Private Limited
- Indiareit Fund, in their real estate joint venture with (i) Paranjape Developers, (ii) Skyline Constructions, (iii) Amsri Developers, and (iv) Neptune Developers
- Indiareit Fund in their investment in (i) Samira Realty Projects Private Limited, and (ii) Samira Getaways Private Limited
- Deal counsel for investment by Milestone Capital into Neptune Developers Limited
- Deutsche Bank (RREEF) on structuring of their real estate investment deals in India
- Farallon, on the India Bulls-Jupiter Mills deal
- Lokhandwala Builders, in the investment made by Trinity Capital into Lokhandwala
- Forum Projects, in their real estate joint venture with Yatra Capital, a EuroNext stock exchange listed real estate fund
- Orbit Corporation Limited in the investment by IL&FS Trust Company Limited, IIRF India Realty X Limited and Moltana Holdings Limited, in Orbit Highcity Private Limited, a wholly owned subsidiary of Orbit Corporation Limited
- Antarctica, in their real estate joint venture with Gramercy
- Advising clients with respect to setting up of Singapore REITS

We have represented companies such as Amazon, NetLogic, OmniCell, EFI, SVB, NVidia and Business Objects in leasing of office space, which included negotiations, managing due diligence on title, and drafting and review of the relevant documentation.

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**Contacts**

- **Siddharth Shah, [siddharth@nishithdesai.com](mailto:siddharth@nishithdesai.com), +91 22 6669 5133, +91 98670 32305**
- **Nishchal Joshipura, [Nishchal@nishithdesai.com](mailto:Nishchal@nishithdesai.com), +91 22 6669 5156, +91 98670 32353**
- **Ruchir Sinha, [ruchir@nishithdesai.com](mailto:ruchir@nishithdesai.com), +91 22 6669 5104, +91 99877 81598**

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](mailto:nda@nishithdesai.com)  
[www.nishithdesai.com](http://www.nishithdesai.com)