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As a research-based law firm, we have often found that our approach allows us to discover newer ways thinking, uncover sharper insights across various industries and find solutions to complex problems. All this has resulted in delivering great outcomes for our clients.

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We sincerely hope you enjoy reading these papers.

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From all of us at NDA



Nishith Desai

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Technology

Technology



July 2023

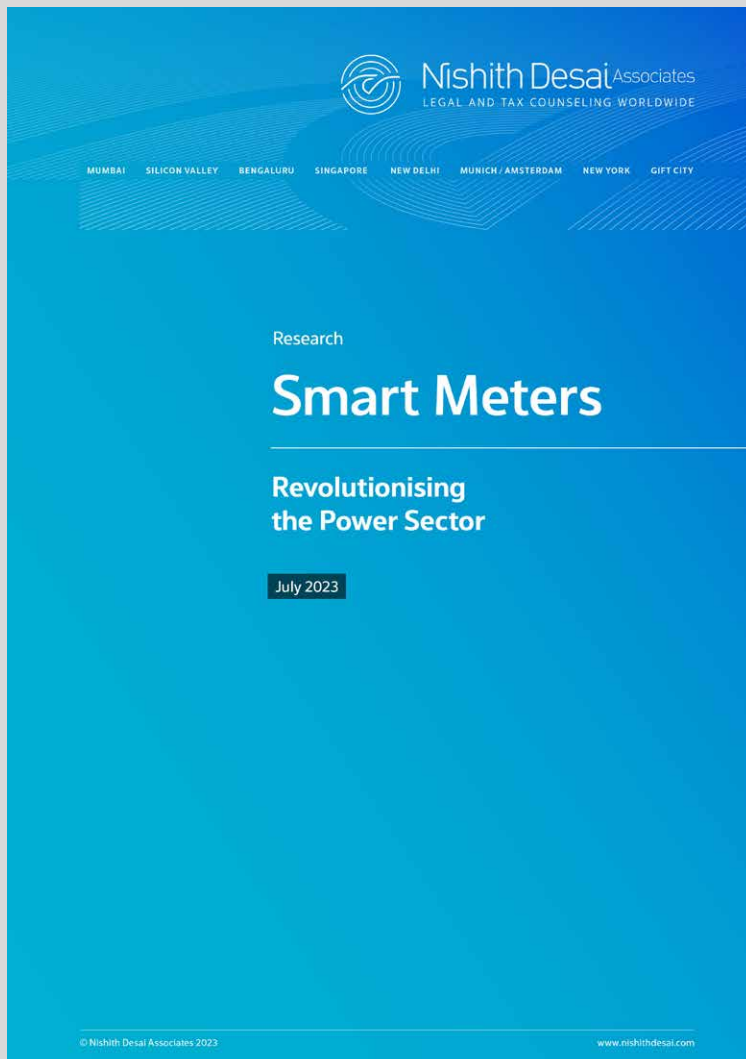
Cybersecurity Law and Policy

Present Scenario and the Way Forward

In this paper, we explore the key cyber threats faced by organisations, best practices to be adopted by organisations, the legal landscape and policy initiatives implemented by the Indian government to combat the growing threats of cybercrimes.



Technology

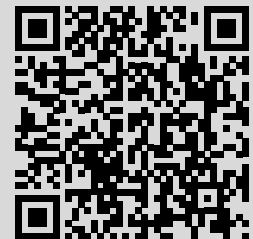


July 2023

Smart Meters

Revolutionising the Power Sector

In this paper, we analyse the legal and regulatory landscape surrounding the implementation of Smart Metering infrastructure in India.



Technology



May 2023

Generative AI & Disruption

Emerging Legal and Ethical Challenges

Generative AI (GAI) continues to be the next big disruption not only for businesses but for human creativity as well. In this paper, we have looked into some of the key use cases of GAI, while examining these questions at length from a legal, regulatory and policy perspective.



March 2023

India's Tryst with Space Exploration

Legal and Regulatory Overview

In this paper, we discuss India's tryst with developing the space exploration sector along with considerable anticipated underlying issues including dual-use technology, foreign direct investment, and intellectual property.

Technology



August 2022

Fintech**Legal, Regulatory and Tax Considerations –
Compendium**

This compendium contains articles that cover the recent developments in the legal, regulatory and tax consideration of the Fintech industry in India. The broad categories in this compendium are Digital Payments, Blockchain, Cryptocurrency, NFTs and Tax considerations.



Technology



July 2022

Crypto & Blockchain**2021-22 Publications**

This paper lays out the legal, regulatory and tax regime for the Crypto and Blockchain industry. There is specific focus on the recent legal developments for virtual digital assets and virtual currency.

Technology



July 2022

Metaverse: A New Universe**Legal, Regulatory and Tax Issues**

This paper analyzes the existing and potential legal and regulatory frameworks which will need to evolve to accommodate the advancements of the Metaverse. It also introduces concepts relating to convergence in the Metaverse and its impact on some industries.





January 2022

Regulations on E-Wallets, Gift Cards and Vouchers Given a Facelift

More Liberalization Needed for Revival

In a significant update, the Reserve Bank of India (“RBI”) released the Reserve Bank of India Master Directions on Prepaid Payment Instruments, 2021 (“PPI Regulations”). More commonly referred to as ‘e-wallets’ or ‘gift cards’, PPIs are payment instruments that can be used for the purchase of goods or services against this stored value.

This paper discusses how the PPI Regulations impact products such as e-wallets, gift cards and vouchers, money transfer wallets, meal vouchers, metro/travel rail cards, etc.

Technology



November 2021

The Global Drone Revolution

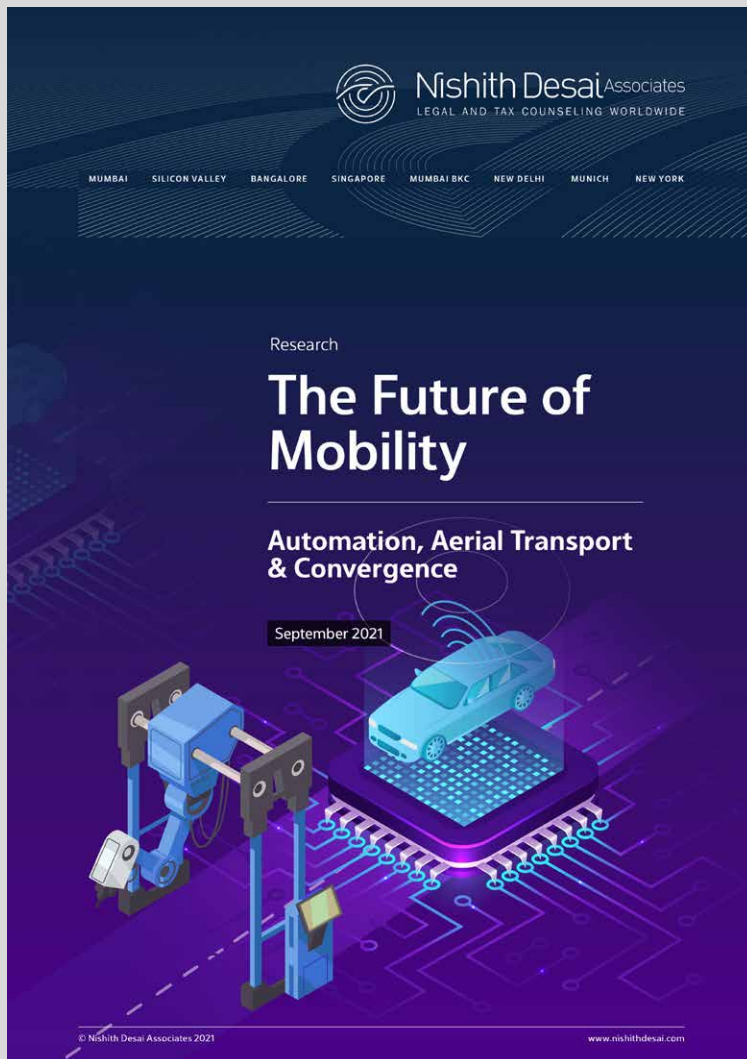
Aerial Transport, Agritech, Commerce and Allied Opportunities

This paper provides systematically examined the existing trends and regulatory regimes on drones in various countries.

We also look at some of the potential concerns that may arise with an increase in the use of drones and legal lacunae and provides for a way forward to ensure successful regulations which strive for a balance between drone usage and policy making.



Technology



February 2021

The Future of Mobility

Automation, Aerial Transport and Convergence

This paper discusses the future of the mobility industry and the ways in which emerging technologies like 5G, edge computing and block chain are likely to aid to the growth of the sector.

Discussed are the future of mobility and the extent of various legal and regulatory frameworks which will need to evolve to accommodate these advancements.



Technology



October 2020

5G Technology in India

Strategic, Legal and Regulatory Considerations

This paper provides a primer on 5G technology in non-technical terms. It gives an overview of extended 5G applications for various sectors, the regulatory landscape for 5G in India.

Various important strategic, policy, regulatory, technical and behavioral considerations are also outlined in this paper.

Technology



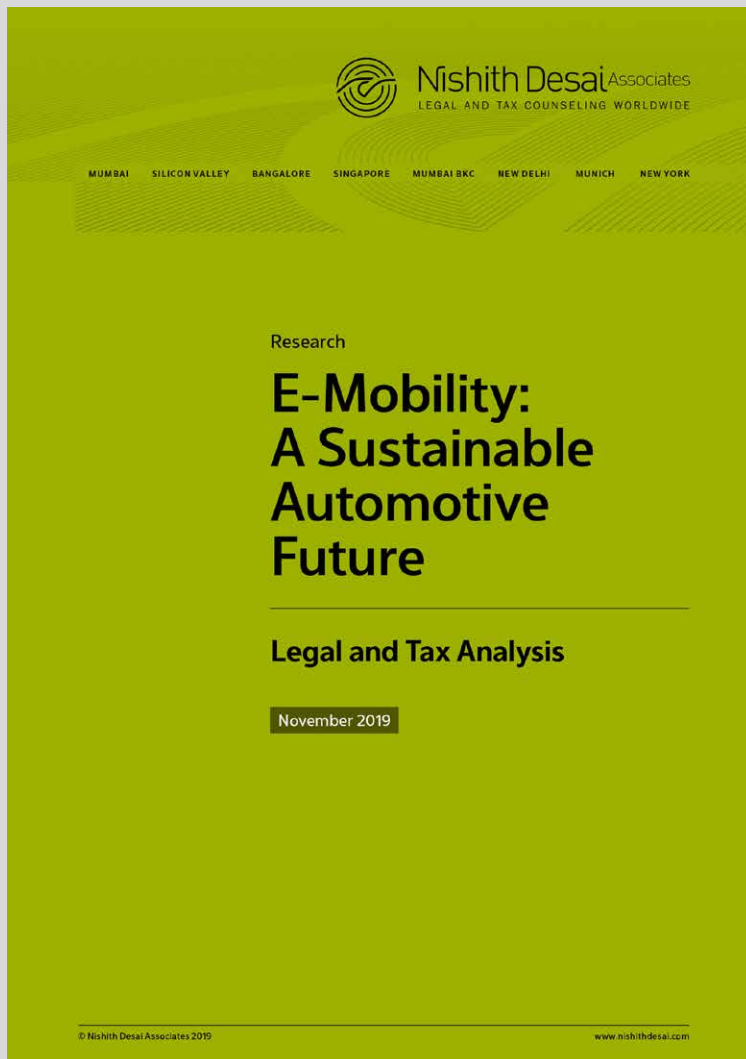
April 2020

3D Printing: Ctrl+P the Future

A Multi-Industry Strategic, Legal, Tax & Ethical Analysis

The paper discusses how the regulation of 3D printing is a challenge that lawmakers, and regulators across sectors will have to contend with. The paper also discusses how the regulation should be comprehensive enough to apply in different instances while still having room for evolving with the technology.





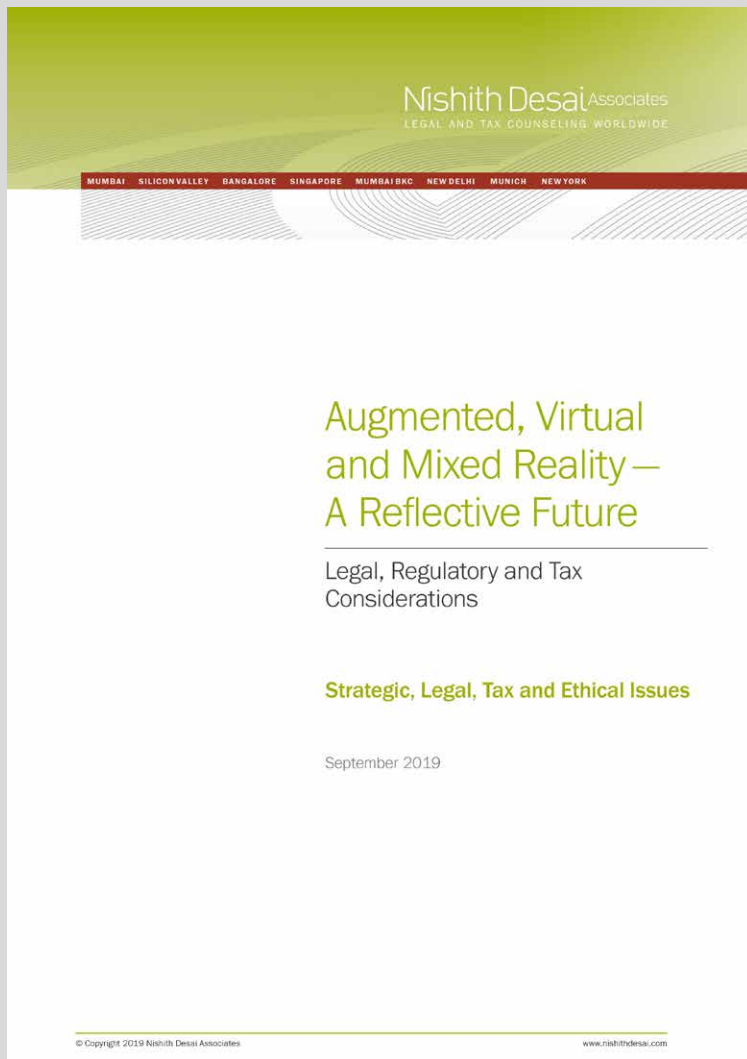
November 2019

E-Mobility: A Sustainable Automotive Future

Legal and Tax Analysis

Our research paper analyses the challenges in the adoption of electric vehicles, from a regulatory, commercial and socio-economic perspective. Policy reports, regulations, state initiatives as well as comparative analyses of EV policies from leading jurisdictions have been considered in this paper.

Technology



September 2019

Augmented, Virtual and Mixed Reality — A Reflective Future

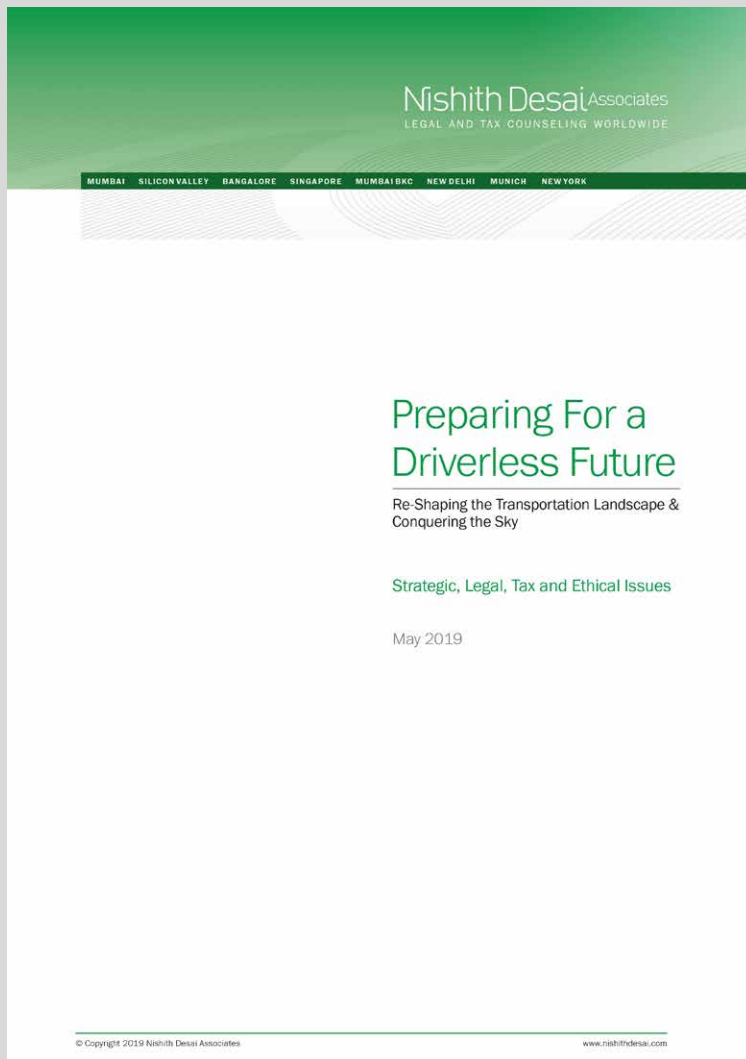
Legal, Regulatory and Tax Considerations

Strategic, Legal, Tax and Ethical Issues

This paper discusses the uncharted legal and tax territories of augmented reality and virtual reality technologies'. It also discusses how these technologies have merged into our daily lives.



Technology



May 2019

Preparing For a Driverless Future

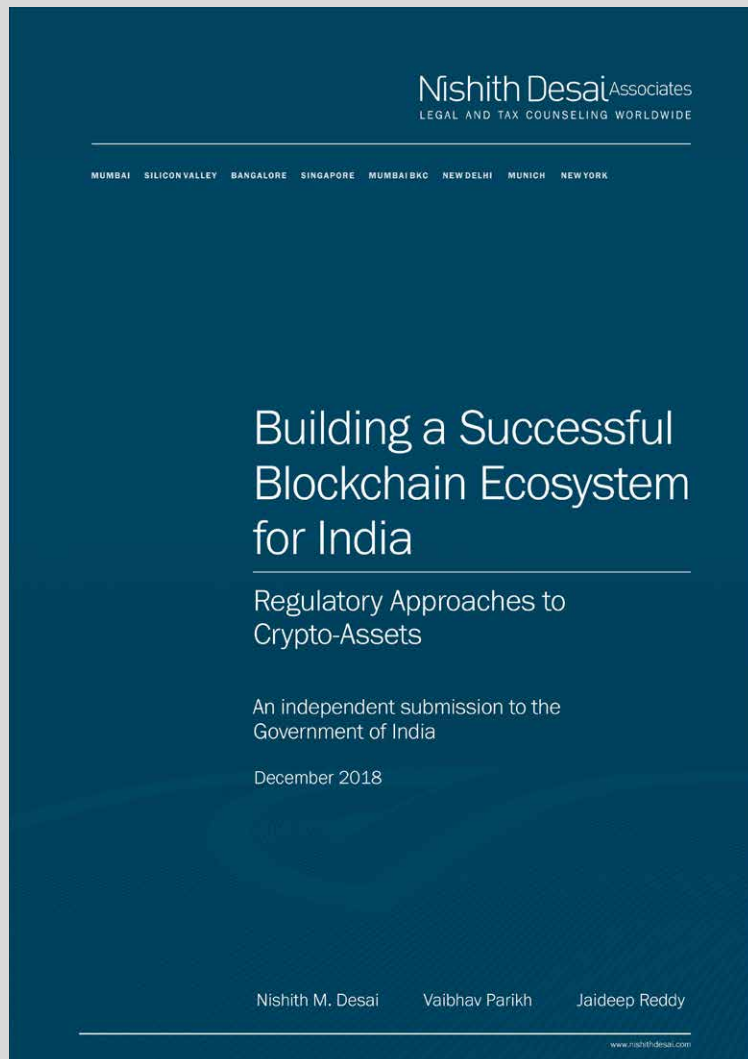
Re-Shaping the Transportation Landscape
and Conquering the Sky

Strategic, Legal, Tax and Ethical Issues

This paper analyzes the effects of the driverless future, and the economic, social, environmental and legal ramifications arising thereof.

It also provides a detailed analysis of publicly available reports, research studies, and media articles as well as opinions of government organizations and industry leaders related to the subject matter.

Technology



December 2018

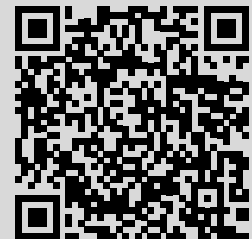
Building a Successful Blockchain Ecosystem for India

Regulatory Approaches to Crypto-Assets

An Independent Submission to the Government of India

The paper discusses the various laws in India that should be actively enforced with regard to crypto-asset business activity. It also addresses the reasons for which an outright ban on crypto asset activity should not be considered.

Technology



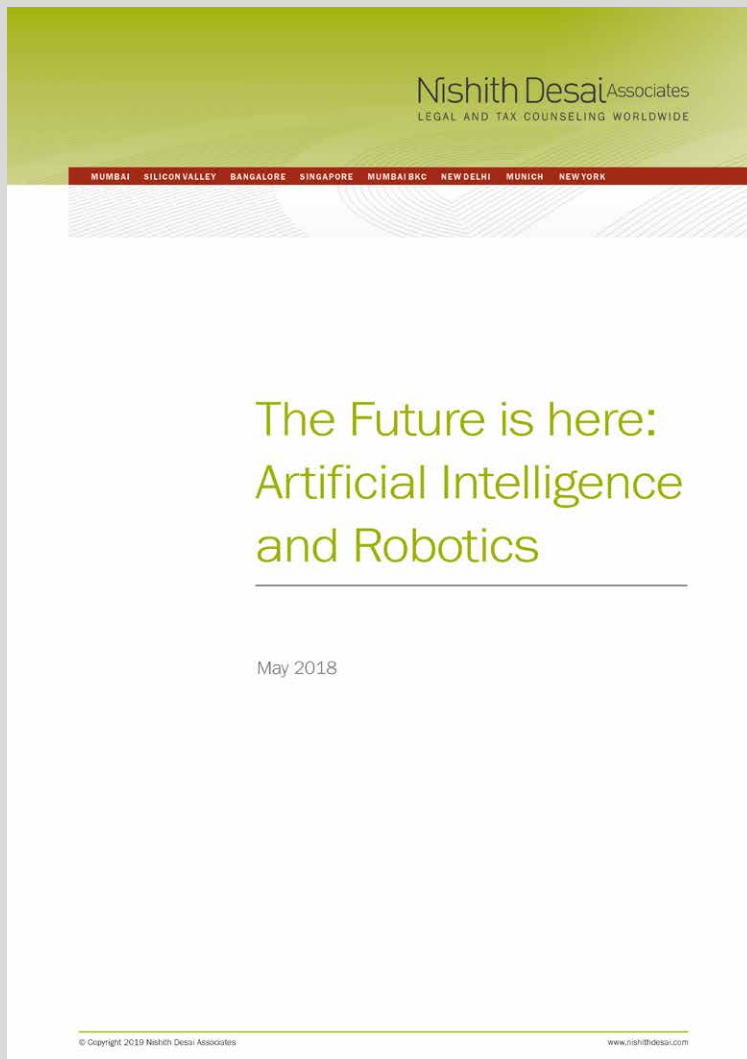
November 2018

The Blockchain

Industry Applications and Legal Perspectives

The paper discusses the working of blockchain technology and the current state of the art in industry. It provides a legal and regulatory perspective, and concludes with a list of challenges and the way forward.

Technology



May 2018

The Future is here: Artificial Intelligence and Robotics

The paper discusses the future of entities and individuals dependency on AI systems. It also covers the several issues that need to be addressed in order to safeguard the development and integration of AI systems with the industrial and social sector.

Corporate and M&A

Corporate and M&A



July 2023

Mergers & Acquisitions**An India Legal, Regulatory and Tax Perspective**

In this Research Paper on M&A, we explore a detailed review of the Indian legal, tax and regulatory considerations to be considered while undertaking any M&A including focus on competition/ antitrust law and exchange control considerations.



Corporate and M&A



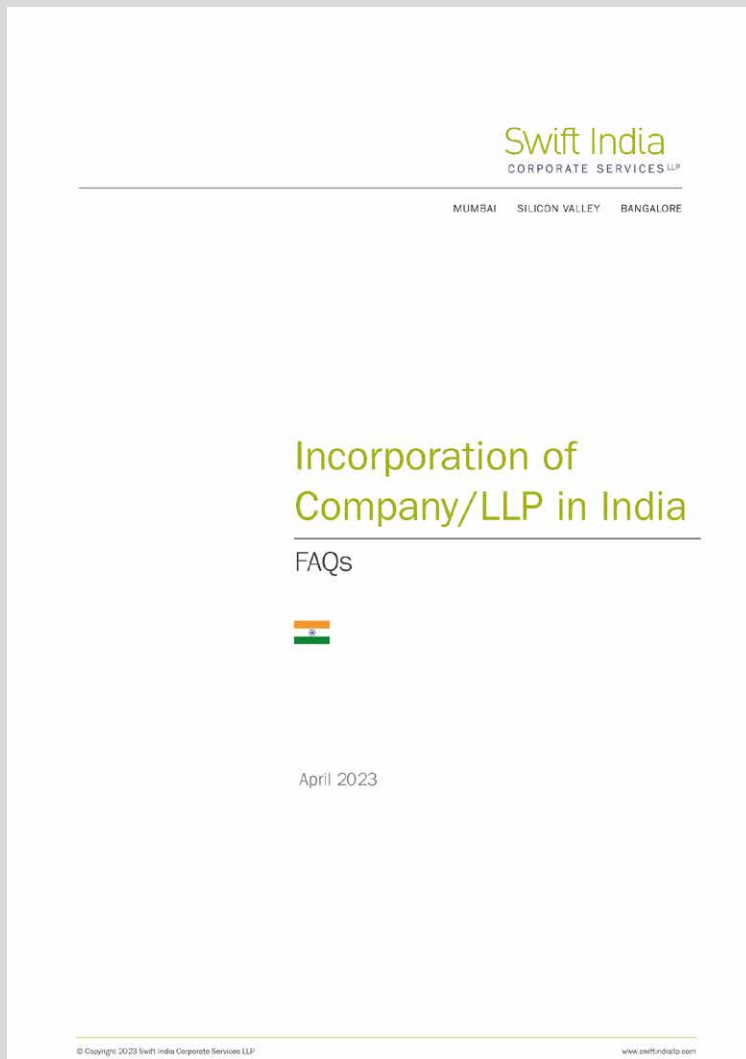
May 2023

M&A Lab**Adani's Hostile Takeover of NDTV**

The Adani-NDTV acquisition has changed the landscape of the entertainment and media industry. The dramatic saga of the acquisition had everything - a mysterious lender, a loan with no interest, a change of control, a hostile takeover, SEBI orders, an open offer below market price and a surprising sale of shares, which resulted in the Adani Group becoming the majority shareholder of NDTV.

In this M&A Lab, we delve into each of these aspects in detail and analyse the legal, regulatory, tax, financing and other commercial considerations of this Deal.

Corporate and M&A



April 2023

Incorporation of Company/LLP in India

FAQs

If you are interested in setting up a business in India and have questions about forming a Company or LLP, this booklet provides basic answers to common queries. It is intended to serve as a broad guide to help you make informed decisions about starting and running your business in India.

Corporate and M&A



August 2022

M&A Lab**ADANI-HOLCIM: Cementing the Future!**

In this M&A Lab, we probe deeper into the multibillion-dollar deal that is bound to revamp the Indian cement industry and stimulate unprecedented growth in the industry with the stellar entry of Adani Group.

We will analyse the legal, regulatory, tax, financing and other commercial dimensions of this intricate Deal.



Corporate and M&A



August 2022

M&A Lab**HDFC-HDFC Bank: Merger of Giant HDFC Twins!**

This mega-merger is being touted as the mother of all M&A deals owing to its colossal valuation of approximately USD 40 Billion and created a stir not only in the banking sector, but also in other financial services.

Given the size of the mega-merger with wide-reaching implications on the banking and housing finance sector in India, we have made an attempt to analyze the legal, regulatory, commercial and tax considerations of the Merger in this M&A Lab.

Corporate and M&A



August 2022

M&A Lab

PVR-INOX: Biggest Blockbuster at Box Office!

The merger of PVR Limited with INOX Leisure Limited marks the latest merger in the Indian theatrical exhibition industry. The two entities will merge to form the largest multiplex chain in India.

In this M&A Lab, we examine this Merger from a commercial, legal, regulatory and tax perspective and aim to answer various questions surrounding the deal, including why and how the companies sought to merge both entities.



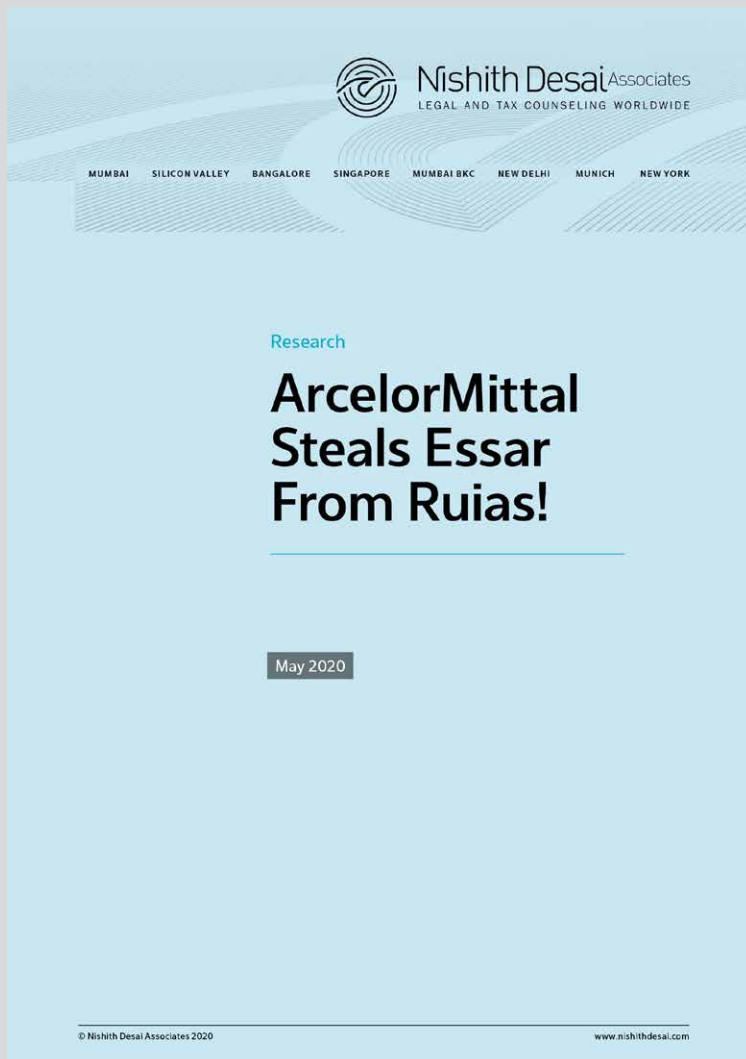
April 2022

Private Equity and Private Debt Investments in India

Regulatory, Legal and Tax Overview

The research paper provides an overview of the Private Equity and the Private Debt Investment in India. It also discusses tax considerations and evolving structures as well as exits for Private Equity and Private Debt Investments and covers dispute resolution mechanisms as well.

Corporate and M&A



May 2020

ArcelorMittal Steals Essar From Ruia's!

This paper discusses the acquisition of Essar Steel from a legal, commercial, financing and tax perspective.

The interpretation taken by various courts to clarify certain ambiguities under the Insolvency and Bankruptcy Code 2016 is also discussed.

International Tax and Fund Formation



May 2023

Sovereign Wealth Funds & Pension Funds: Investments into India

Regulatory, Legal and Tax Overview

In this paper, we have analysed the legal, regulatory and tax regime governing investments by sovereign wealth funds and pension funds in India.



May 2022

Taxing Offshore Indirect Transfers in India

Under the Indian Income Tax Act, 1961 ("ITA"), an Indian resident is taxed on its global income (residence-based taxation) whereas a non-resident is taxed only on the income which is derived from a source in India (source based taxation) i.e. income which is received or deemed to be received in India and income which accrues, arises

or is deemed to accrue or arise in India. The subsequent parts of this paper deal with the legislative history of Indirect Transfer in India and are followed by other nuances.

International Tax and Fund Formation



May 2022

Fund Formation: Attracting Global Investors

Global, Regulatory and Tax Environment impacting India focused funds

Fund documentation is critical in ensuring protection for fund managers (GPs) from exposure to legal, tax and regulatory risks. Fund counsels are now required to devise innovative structures and advise investors on terms for meeting investor's (LP) expectations on commercials, governance and maintaining GP discipline on the articulated investment strategy of the fund.

The objective of this compilation is to bring to focus, aspects that need to be considered while setting up India focused funds and some of the recent developments that impact the fund management industry.



May 2022

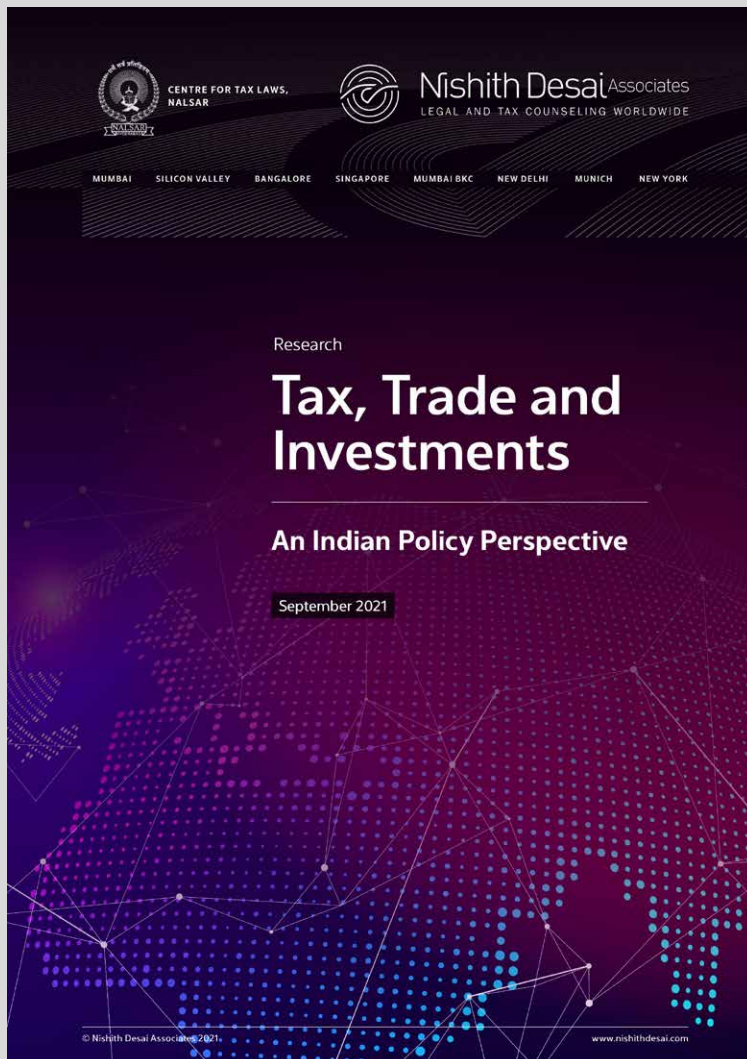
Tax issues in M&A Transactions

Our research paper on Tax Issues in M&A Transactions is a comprehensive summary of the various ways (merger, demerger, slump sale, asset sale etc.) of undertaking an M&A transactions and potential tax (direct and indirect), stamp duty implications of such transactions.

This paper also discusses frequently litigated issues in both domestic and international M&A transactions, implications of cross border merger regulations, indirect transfer provisions, taxation of non-compete payments and ESOPs etc.



International Tax and Fund Formation



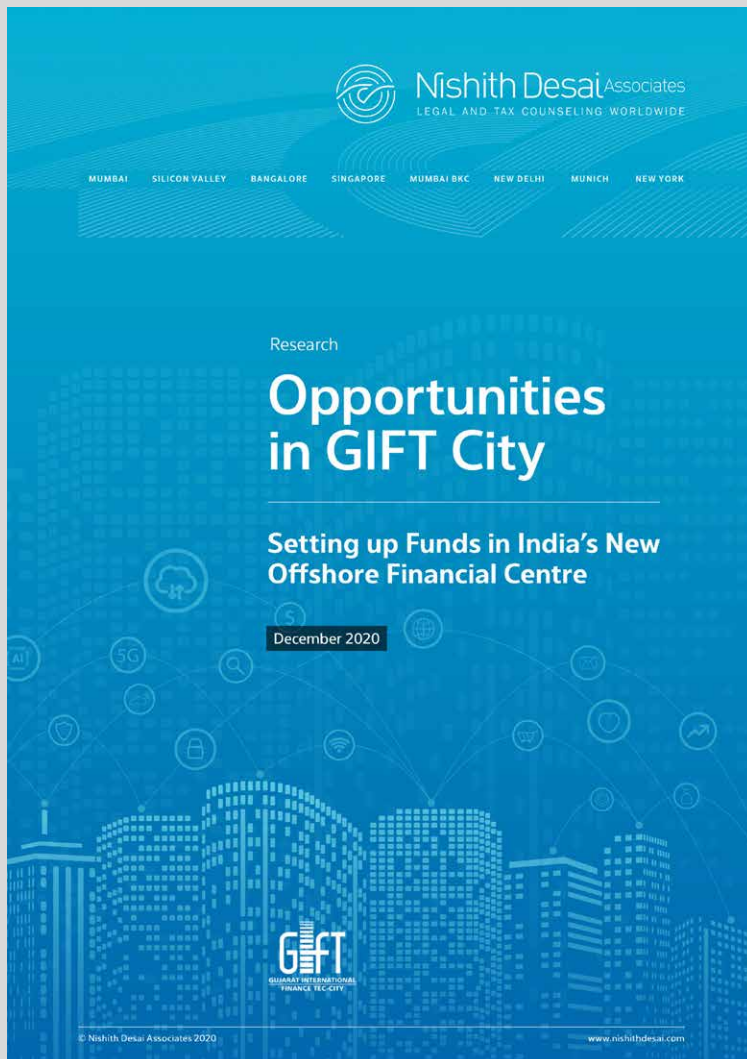
September 2021

Tax, Trade and Investments**An Indian Policy Perspective**

This paper sets out different considerations for a cohesive tax, trade and investment policy from an Indian perspective.

It also discusses India's international trade relationship with major economies around the world, India's trade plans amidst COVID-19 while considering the government's tax policy objectives and foreign investment goals.

International Tax and Fund Formation



December 2020

Opportunities in GIFT City

Setting up Funds in India's New Offshore Financial Centre

This paper discusses the regulatory regime for GIFT City and also mentions some structures that may be explored in GIFT City.

It further discusses the direct and indirect tax benefits extended to units established in IFSC to promote their growth.



International Tax and Fund Formation



June 2020

Technology and Tax Series

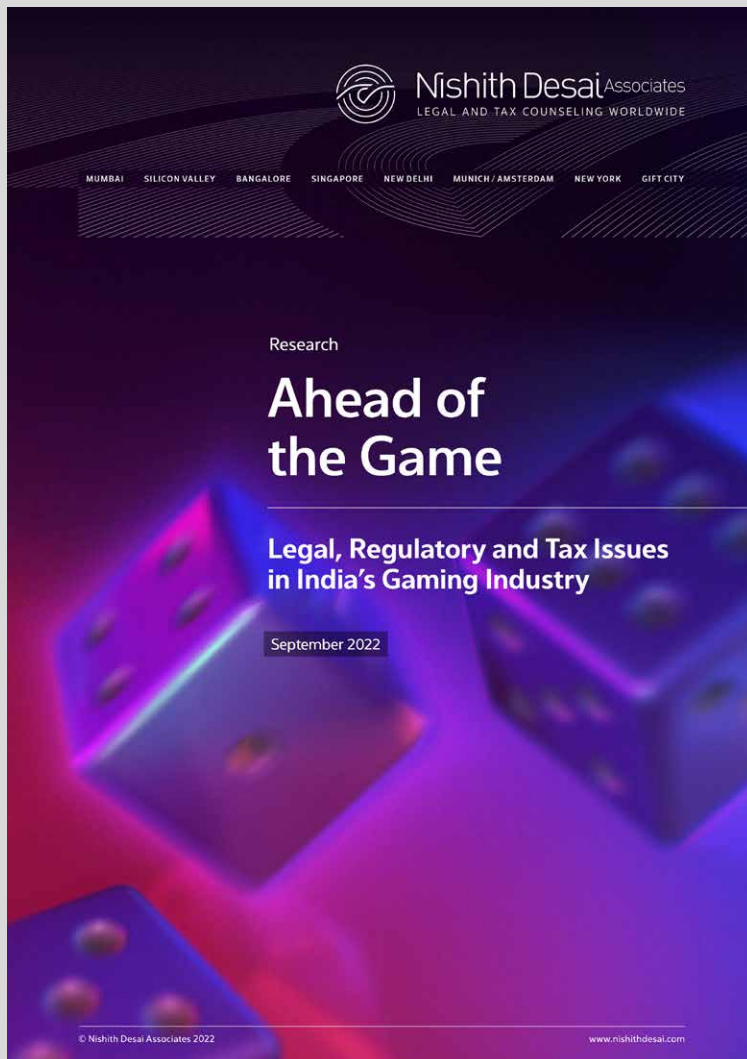
Indian Equalization Levy Expanded –
A Surprise Move!

A Bloomberg Publication

This paper discusses the several issues and open points related to the provisions of the E-com EL. The practicable and workable situations for E-com EL are also examined.

Media & Entertainment

Media & Entertainment



September 2022

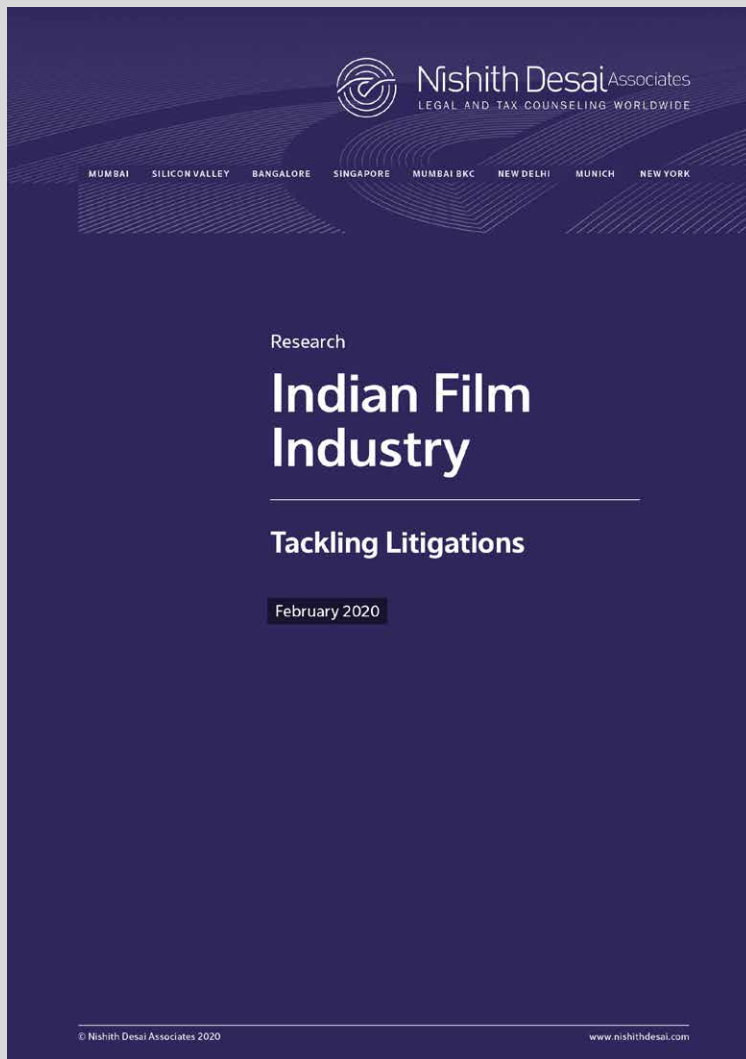
Ahead of the Game

Legal, Regulatory and Tax Issues in India's Gaming Industry

The online gaming industry in India is one of the fastest growing sunrise industries. In this paper, we will discuss the laws applicable to gaming businesses in India, interpretation of the laws by the Indian courts, as well as reflect on policy changes which may shape future regulation.



Media & Entertainment



February 2020

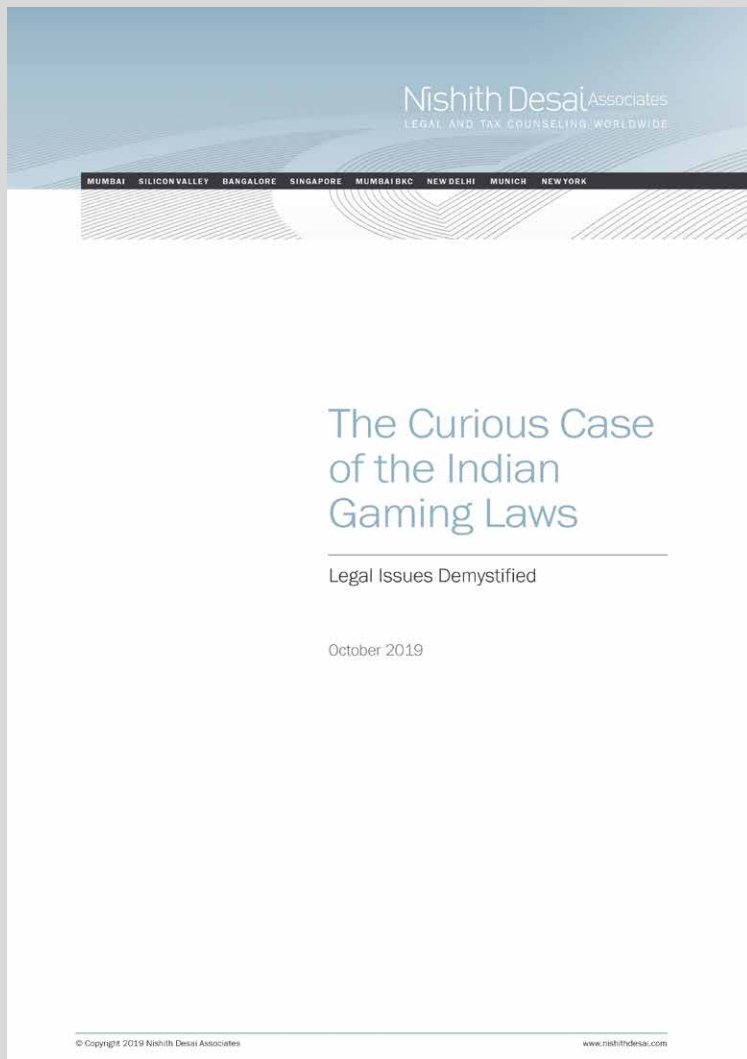
Indian Film Industry

Tackling Litigations

This paper gives an overview of the Copyright Law in India. It discusses the best practices and strategies to be adopted vis-a-vis litigation that may arise at each stage of the film making process.



Media & Entertainment



October 2019

The Curious Case of the Indian Gaming Laws

Legal Issues Demystified

This paper discusses the scope of gambling/gaming laws and the evolution of the gambling/gaming industry in India.

Data Protection and Privacy

Data Protection and Privacy

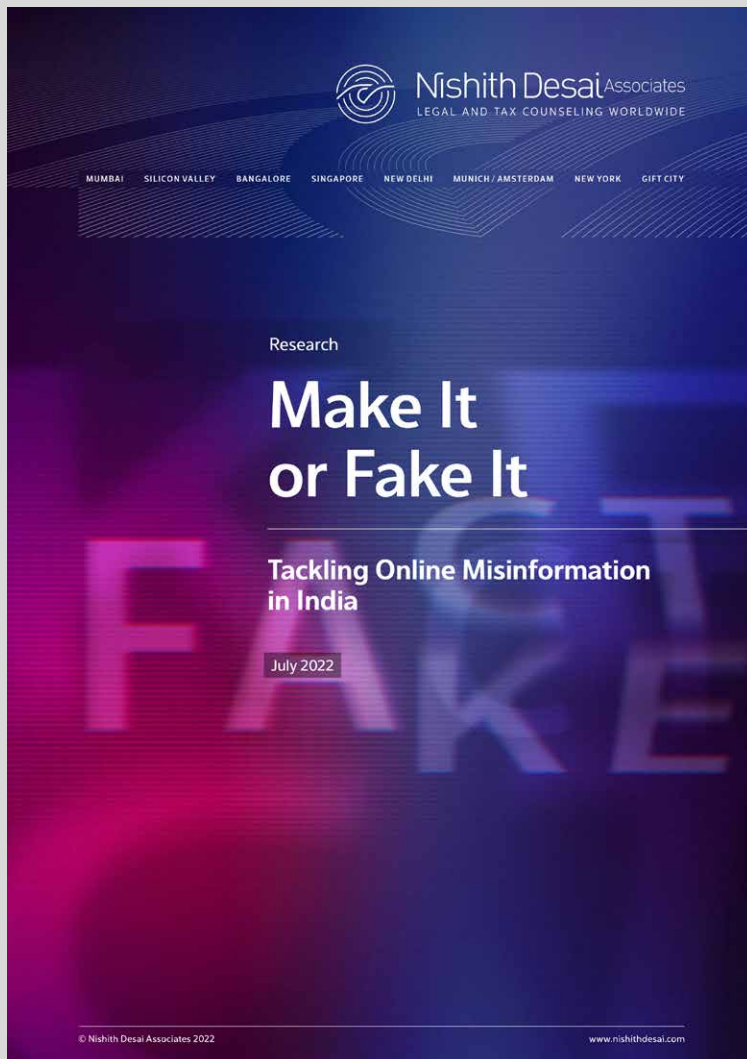


June 2023

Privacy and Data Protection in India

Developments in privacy and data protection are coming fast and thick, the latest being the government's cybersecurity directions. Sectoral regulations continue to be updated, and the draft Data Protection Bill appears to be just beyond the horizon in India.

There are calls for both seamless cross-border data sharing as well as localization of some protected categories of data. In our research paper, the legal, ethical and tax considerations of the latest data privacy developments in India are discussed. We also provide an analysis of the Data Protection Bill, 2021 and comparative notes to the GDPR.



July 2022

Make It or Fake It

Tackling Online Misinformation in India

This paper lays out the existing legal and regulatory framework for tackling online misinformation in India. It discusses the way forward and a comparative analysis with the framework in other jurisdictions.





May 2022

Privacy & Data in India: Fostering the World's Digital, Innovation and Outsourcing Destination

Legal, Ethical and Tax Considerations and Comparative Notes to the GDPR

Developments in privacy and data protection are coming fast and thick, the latest being the government's cybersecurity directions. Sectoral regulations continue to be updated, and the draft Data Protection Bill appears to be just beyond the horizon in India.

There are calls for both seamless cross-border data sharing as well as localization of some protected categories of data. In our research paper, the legal, ethical and tax considerations of the latest data privacy developments in India are discussed. We also provide an analysis of the Data Protection Bill, 2021 and comparative notes to the GDPR.

Data Protection and Privacy



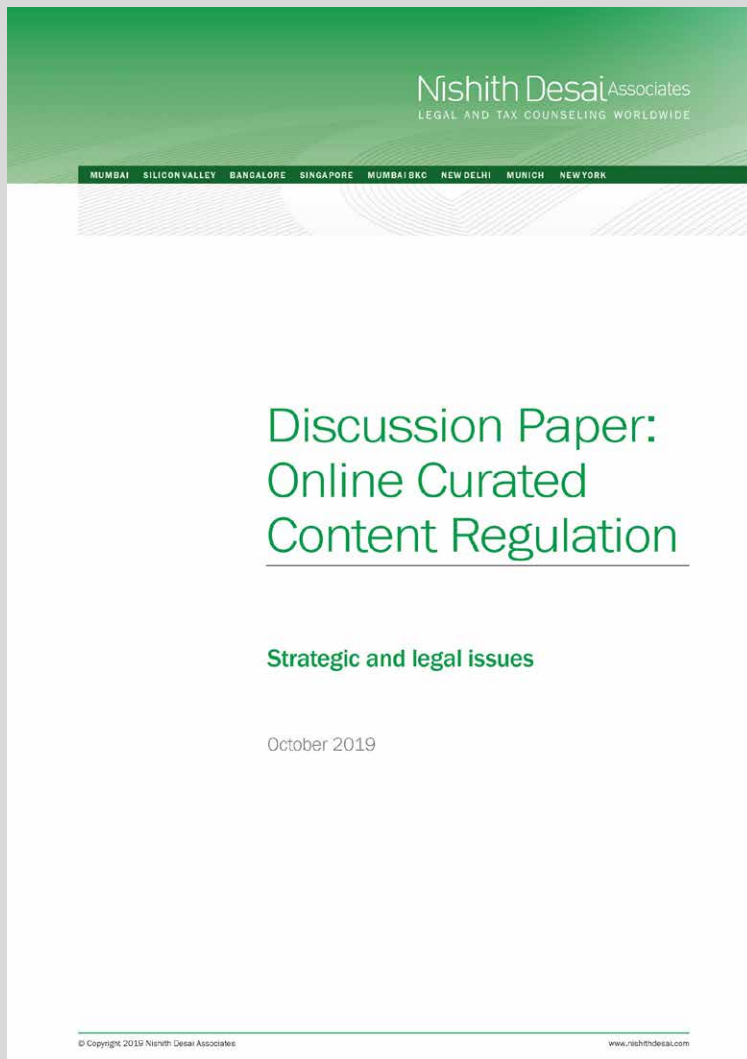
July 2020

Privacy & Data: India's Turn to Bat on the World Stage

Legal, Ethical and Tax Considerations

The paper discusses the existing legal framework for data protection and the new laws that have been proposed in India.

Tax considerations on the draft of data protection law are also discussed.



October 2019

Discussion Paper: Online Curated Content Regulation

Strategic and Legal Issues

The paper discusses online curated content platform. The paper also analysis the reasons for which these platforms need certain regulations.

Intellectual Property



May 2022

Key Issues & Considerations for IP Centric Transactions

Each IP based transaction has its own set of complexities and nuances. However, there are certain concepts and issues which are common to most of IP transactions. In this such issues are discussed in detail in the Indian context.



July 2021

Patent Litigation in India

Strategy and Law

The paper discusses the various principles developed by courts surrounding claim construction, establishing infringement of patents involving different types of inventions, role of scientific experts, etc.

We also discuss how these principles are important to understand the approach of Indian courts in patent litigations, and how essential they are for the formulation of an effective litigation strategy to ensure timely and positive results.



International Disputes & Investigations



June 2023

Time for Evolution of Sport Adjudication in India

Is Sports Arbitration the Way Forward?

In this paper, we gauge the viability of sports arbitration in India, global sports arbitration regime ranging from the nature of disputes adjudicated by the CAS to the jurisprudence adopted courts globally.

International Disputes & Investigations



January 2023

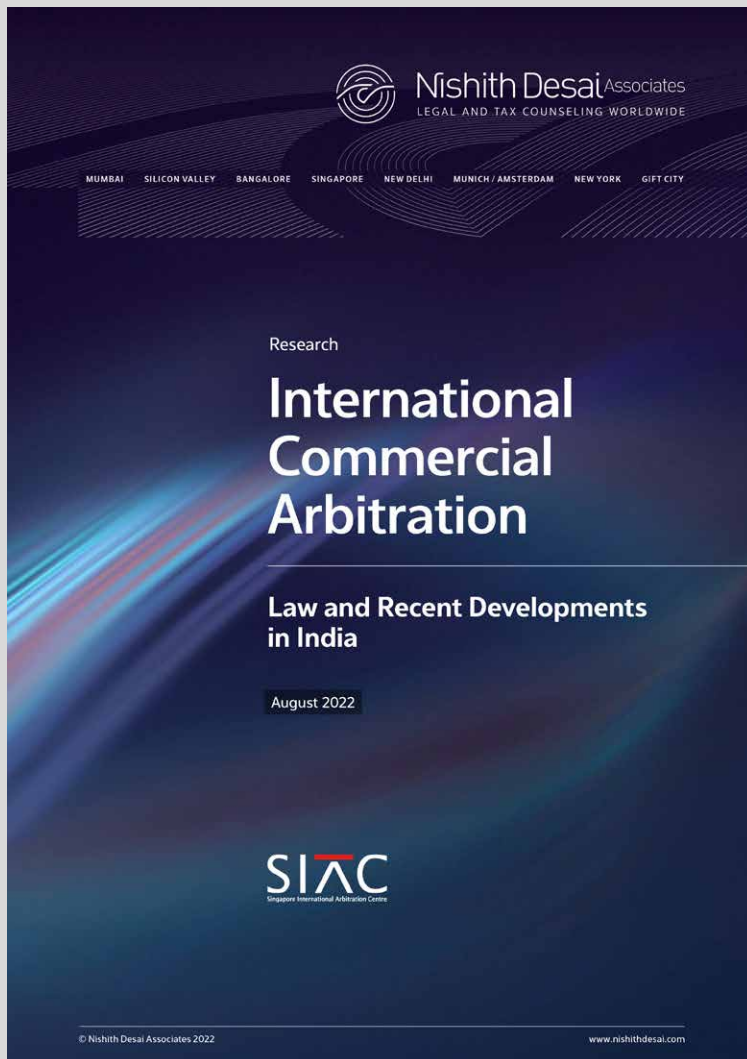
Resolving Disputes

**Between Foreign Investors
& The Indian State / State Entities**

**With Practical Solutions for managing Disputes
and Enforcing Outcomes**

India, despite the effect of the COVID-19 pandemic, remains one of the top destinations for investments globally.

In this paper, written in partnership with SIAC and a chapter from ICSID, we discuss all that foreign investors need to know when they anticipate a dispute with the Indian State (or State entities).



August 2022

International Commercial Arbitration

Law and Recent Developments in India

An increase in international trade and investment is accompanied by growth in cross-border commercial disputes and international arbitration has emerged as a preferred option for resolution.

This paper discusses the regime for international commercial arbitration in India and emerging issues.



August 2022

Sports Disputes in India

The Role of Courts in Selecting National Teams

This paper intends to demystify the complexities of the field of sports through a series of articles which shall broadly cover the role of Indian courts in the selection of national teams, a comprehensive sport law: the need of the hour, the jurisprudence around sports arbitration etc.

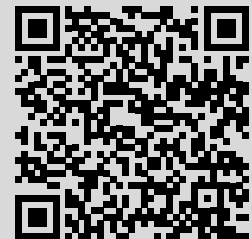


August 2022

The Contours of Conducting Internal Investigations in India

This paper lays down the essentials of internal investigations undertaken in corporates including the guidelines for conducting investigations and the obligations under law.





June 2022

A Primer

Service of Foreign Judicial and Extrajudicial Documents in Civil and Commercial Matters in India

Increasing globalization has prompted numerous cross-border litigations. Service of process marks the beginning of litigation. This paper discusses the framework and the process governing service of documents to and from India including the Hague Convention on Service.



June 2022

Enforcement of Arbitral Awards and Decrees in India

Domestic and Foreign

We have come across situations where the opposite parties decide to not participate in the arbitral process or abandon it mid-way. The enforcement of these awards/judgments where the party is in absentia is sometimes more complicated than one where the opposite party has participated in the proceedings.

The procedure for enforcement and execution of decrees in India is governed by the Code of Civil Procedure, 1908 ("CPC") while that of arbitral awards in India is primarily governed by the Arbitration & Conciliation Act, 1996 ("Act") as well as the CPC. In this paper, we discuss the various aspects of the Enforcement of Arbitral Award (Domestic & Foreign).



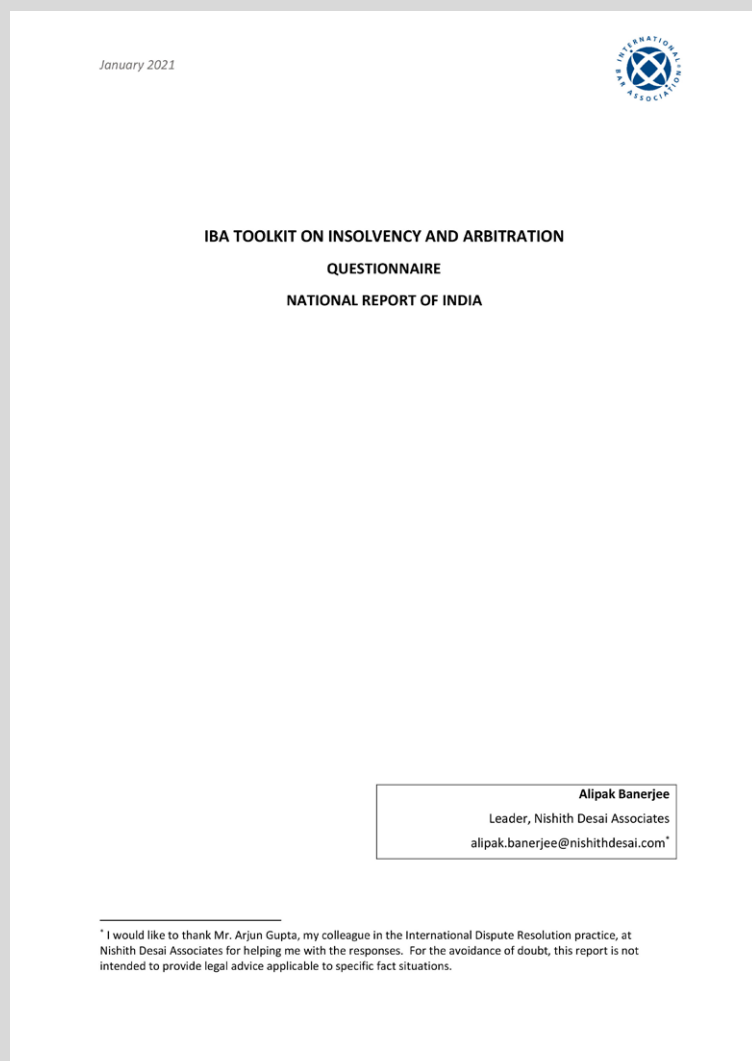
May 2022

Law of Damages in India

This paper broadly covers damages in cases of contractual breaches in India. It gives a brief overview of claims and grant of damages in cases of torts, indemnity contracts, arbitral proceedings, sale of goods, consumer disputes, intellectual property rights (copyrights, trademarks and patents) and engineering, procurement, and construction contracts (also known as EPC contracts).



International Disputes & Investigations



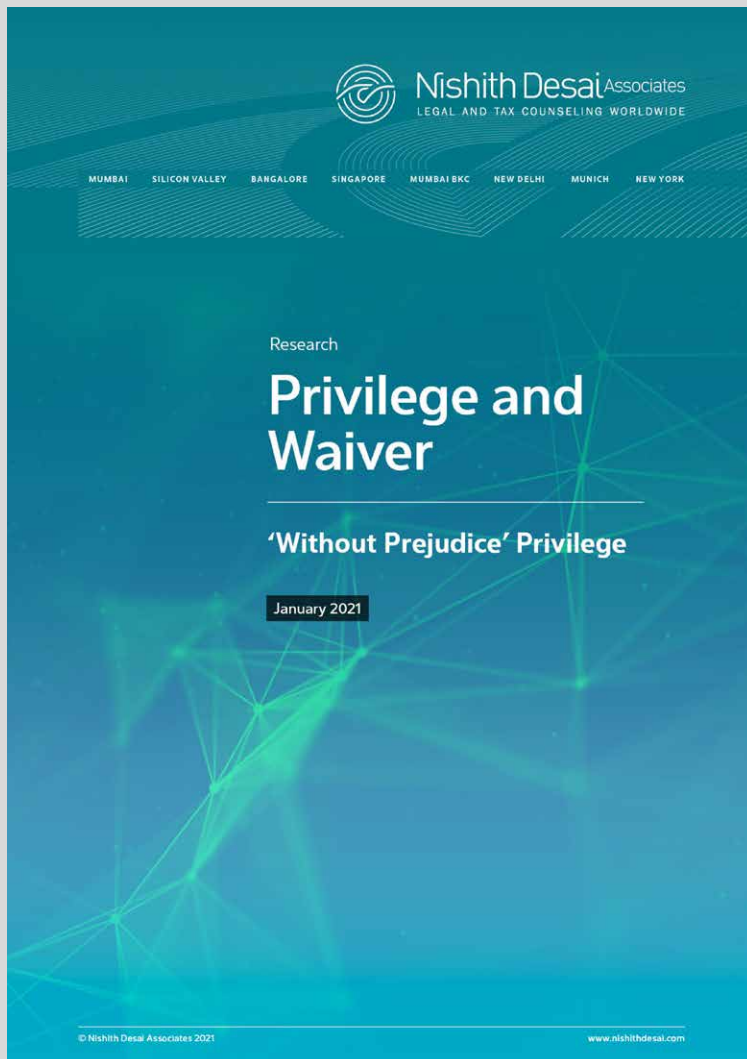
January 2021

IBA Toolkit on Insolvency and Arbitration

Questionnaire

National Report of India

This Research Paper discusses the questions related to the effects that insolvency proceedings initiated in India produce on arbitration commitments (foreign as well as national/local) involving the insolvent party.



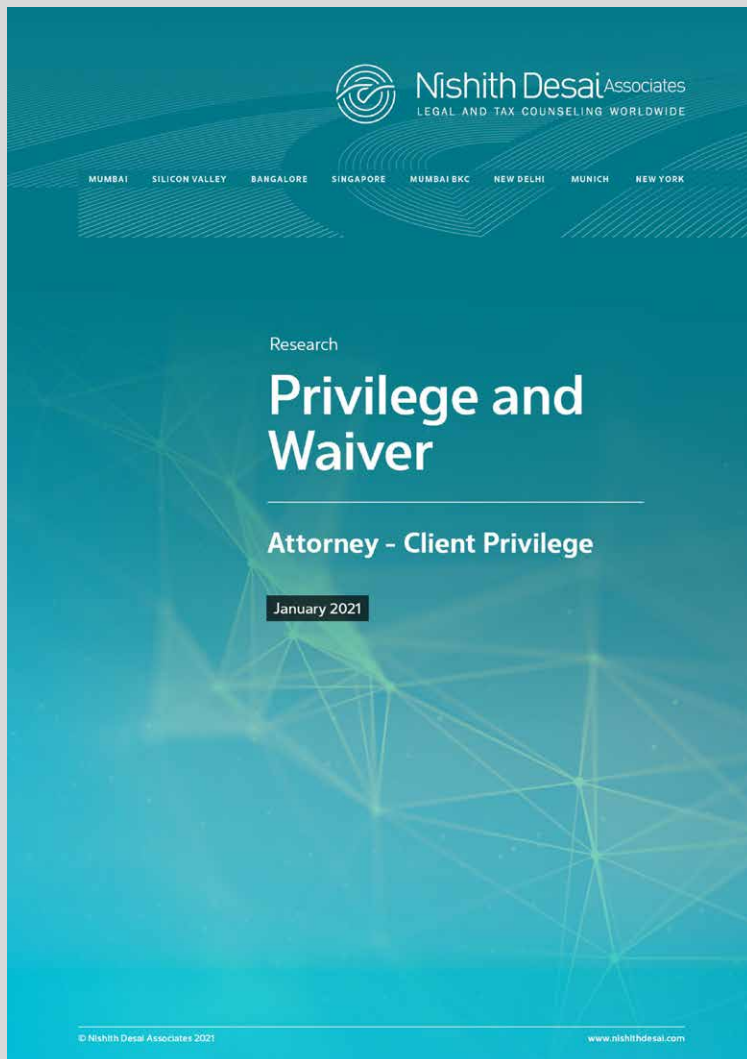
January 2021

Privilege and Waiver

'Without Prejudice' Privilege

This paper explores the contours of the waiver of 'without prejudice' privilege whilst drawing references from common law jurisdictions such as the UK and Singapore.





January 2021

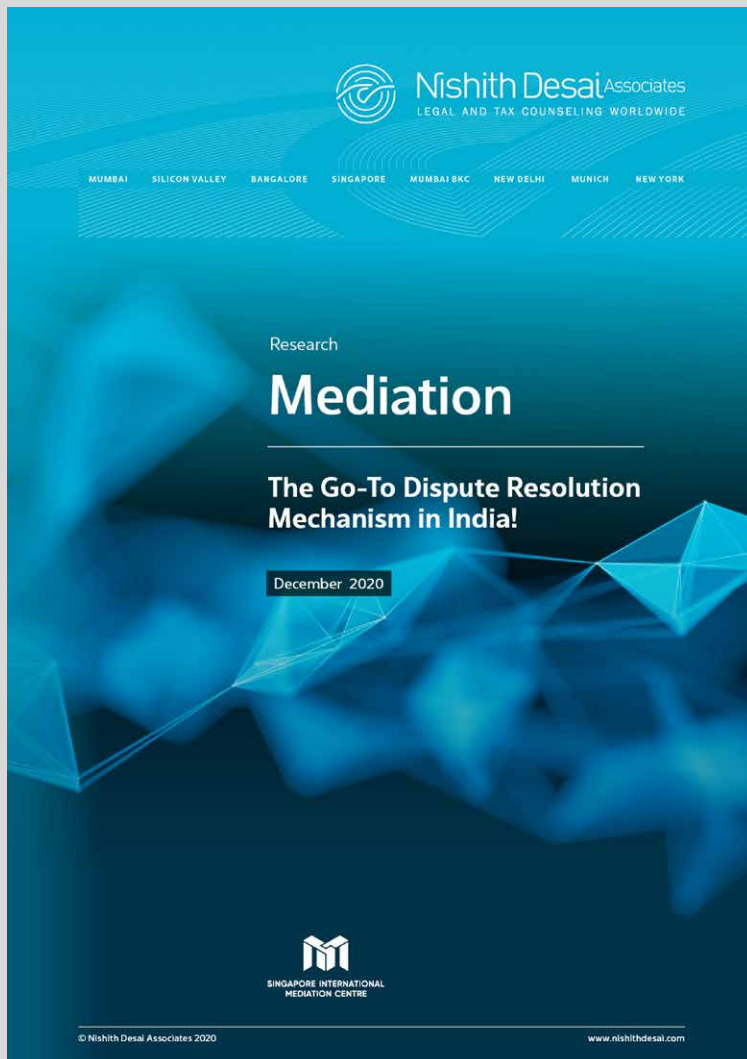
Privilege and Waiver

Attorney-Client Privilege

The paper discusses the Indian jurisprudence in the context of legal privilege and waivers while comparing it with UK, USA, and Singapore. This paper also reviews the distinction between express and implied waiver of legal privilege in India.



International Disputes & Investigations



December 2020

Mediation

The Go-To Dispute Resolution Mechanism in India!

This paper discusses Mediation in the Indian Perspective and the recent trends pertinent to Mediation in India. It also discusses the potential future of Mediation in India.

International Disputes & Investigations



October 2020

Vodafone Holdings B.V. versus Republic of India

International Investment Treaty Arbitration

The paper provides a detailed analysis of the impact of the Vodafone award on foreign investors. It provides a background to the dispute and examines the prominent issues arising out of the Vodafone award.

This paper also provides an excerpt of the award.



April 2020

Dispute Resolution in India

An Introduction

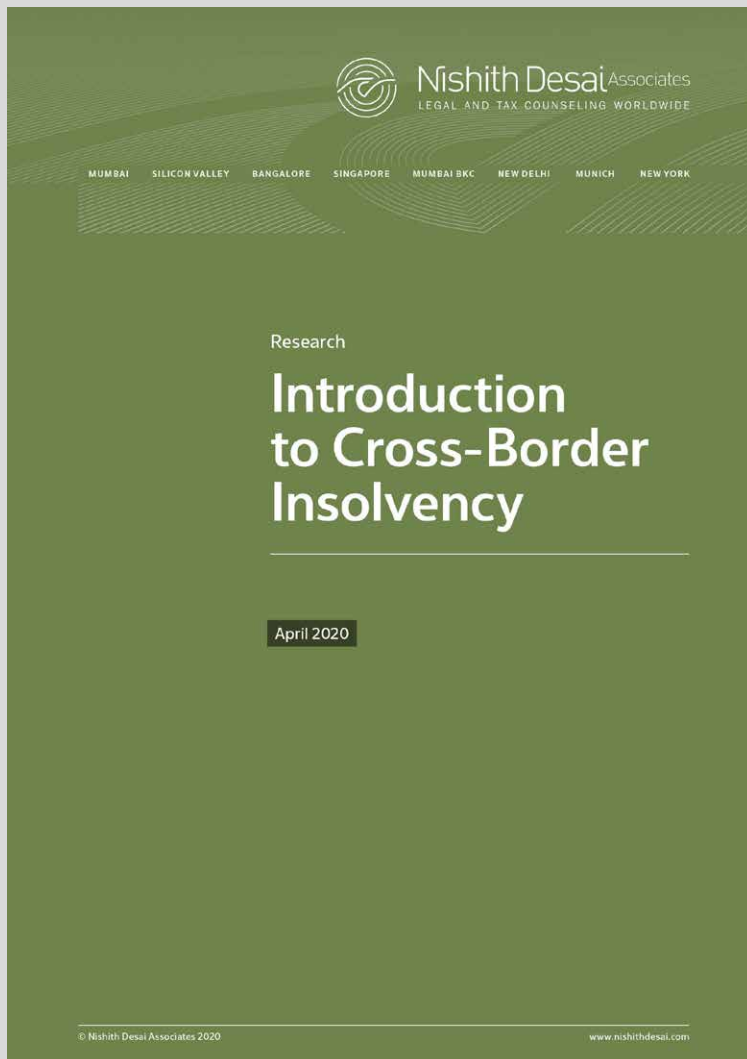
This paper attempts to provide an introduction to the Indian legal and judicial system. It also discusses the key provisions applicable to certain cases.



April 2020

Construction Disputes in India

The paper discusses the remedies for breach in Construction Projects in India. It also discusses the various dispute resolution mechanisms.



April 2020

Introduction to Cross-Border Insolvency

The paper discusses the concept of cross border insolvency. It covers the insolvency law in context of various countries including USA and Singapore. Also the future of Cross Border Insolvency in India is discussed in this paper.



March 2020

An Overview of AntiCorruption Laws in India

A Legal, Regulatory, Tax and Strategic Perspective

This paper discusses the regulatory framework and law in relation to anticorruption laws and risks associated with noncompliance, in particular reference to possibility of a change in the anti-corruption landscape with the passing of the POCA Amendment Act.

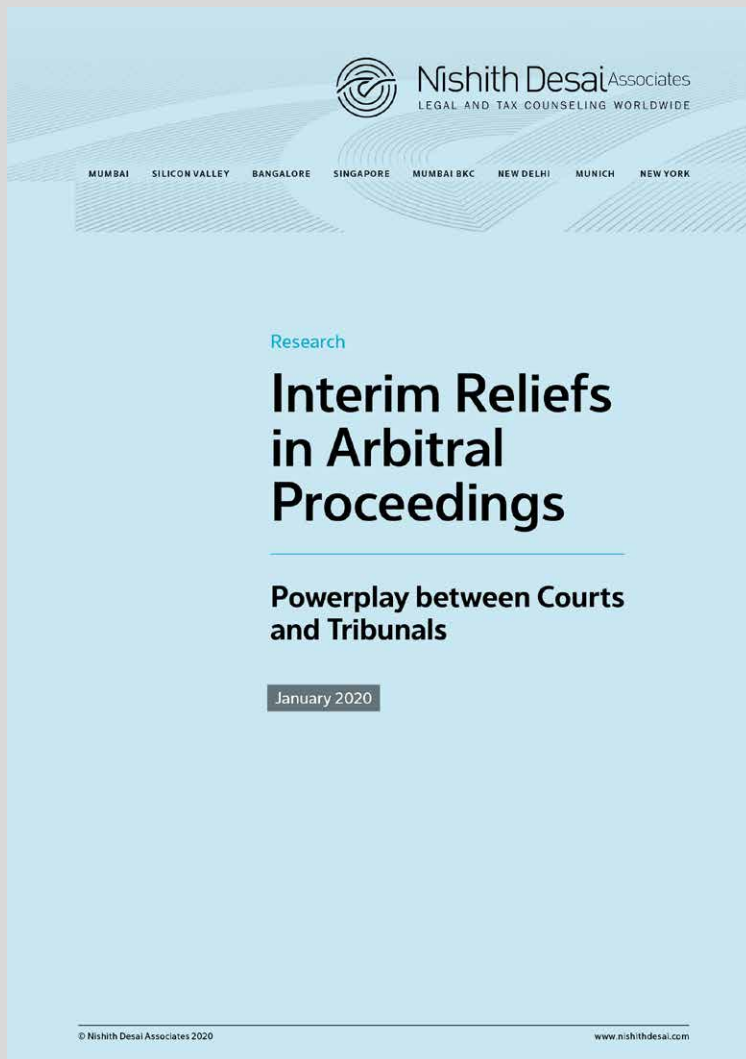
Opportunities for companies to design preventive and compliance mechanisms are also discussed.



January 2020

Enforcing U.S. Arbitral Awards and Judgments in India

This paper provides practical insight to US parties looking to enforce awards and judgments emanating from the U.S. in India.



January 2020

Interim Reliefs in Arbitral Proceedings

Powerplay between Courts and Tribunals

This paper discusses the nature of interim reliefs which can be granted by courts and arbitral tribunals and their respective limitations.

It also provides a comparative analysis of the interim reliefs granted by tribunals in India, United Kingdom and Singapore.



April 2019

International Investment Treaty Arbitration and India

With special focus on India Model BIT, 2016

This paper discusses the landscape of international investment treaty law and its connect with India. It addresses the challenges that for India distinct from the global landscape of BITs, and views India through a prism of dispute resolution mechanism.

Pharmaceutical, Lifescience & Healthcare



July 2023

Clinical Trials and Biomedical Research in India

Legal and Regulatory Framework

In this research paper we discuss the scope regulatory life cycle of clinical trials, modes of entry, emerging trends and challenges to clinical trials in India.



July 2023

Digital Health in India

This paper gives an overview of the law and regulations applicable to organisations incorporating digital health in their business models.





July 2023

Telemedicine in India

The Future of Medical Practice

The research paper provides a comprehensive overview of the legal and regulatory framework applicable to the telemedicine industry in India.





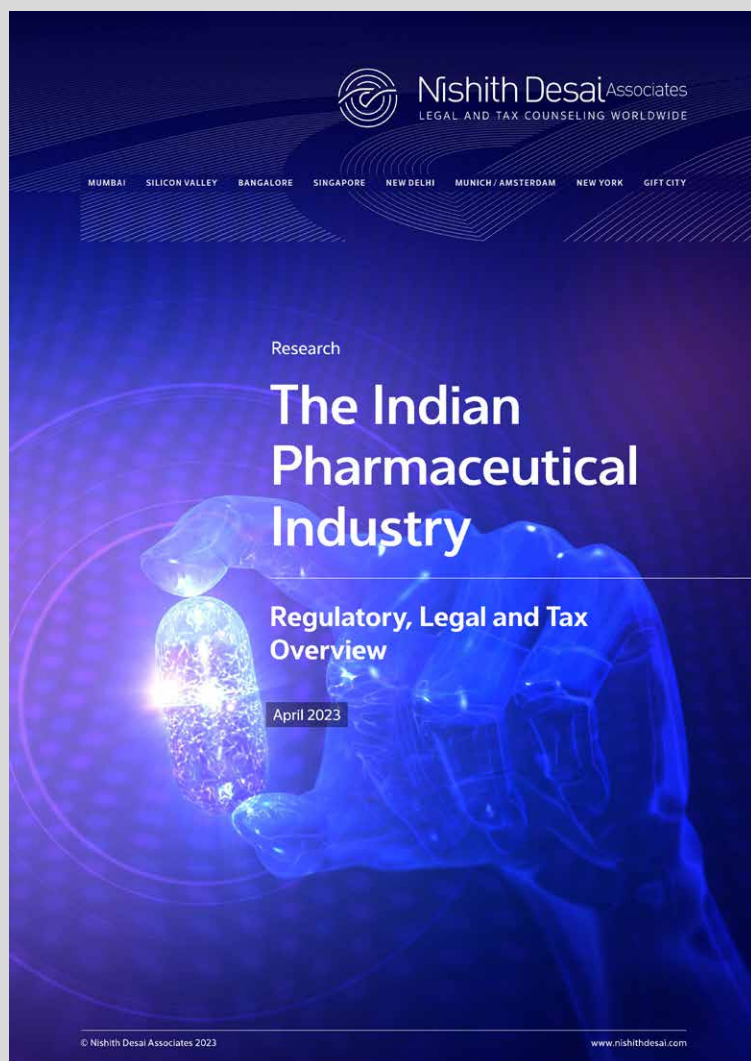
April 2023

Medical Device Industry in India

Regulatory, Legal and Tax Issues

In this paper, we have outlined the legal and regulatory landscape India and the India-specific considerations global medical device companies should keep in mind.





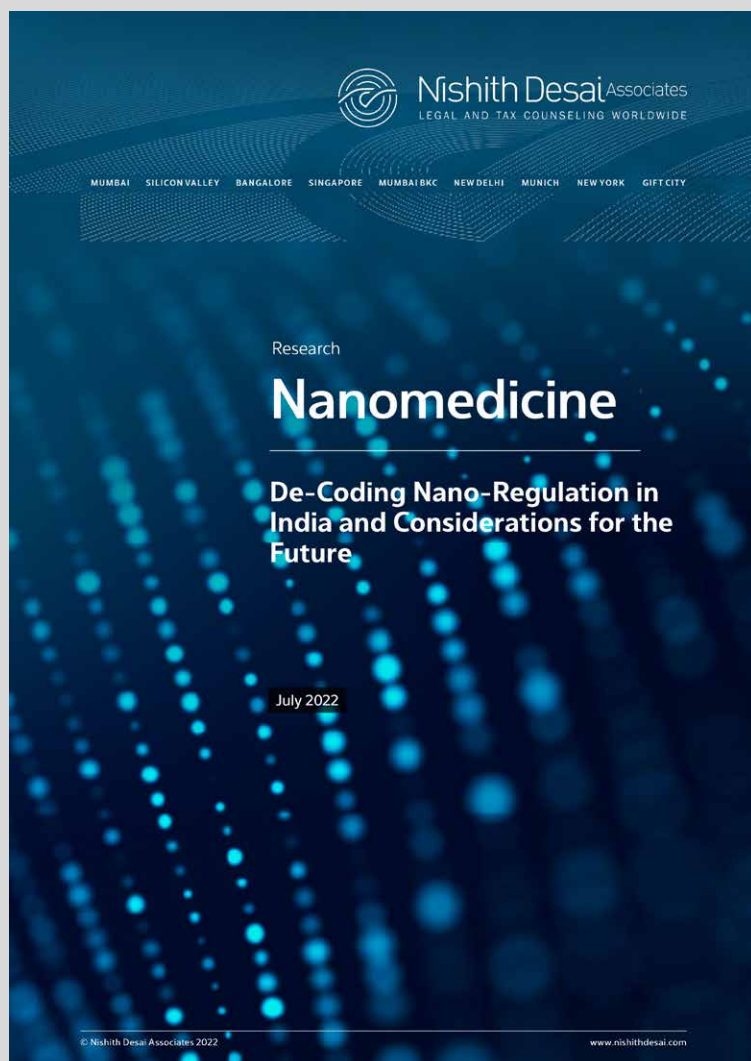
April 2023

The Indian Pharmaceutical Industry

Regulatory, Legal and Tax Overview

In this paper, we have outlined the entity structures, the tax regime, both direct and indirect, affecting the structuring of Indian operations, the regulatory aspects and the intellectual property issues that affect the pharmaceutical industry.



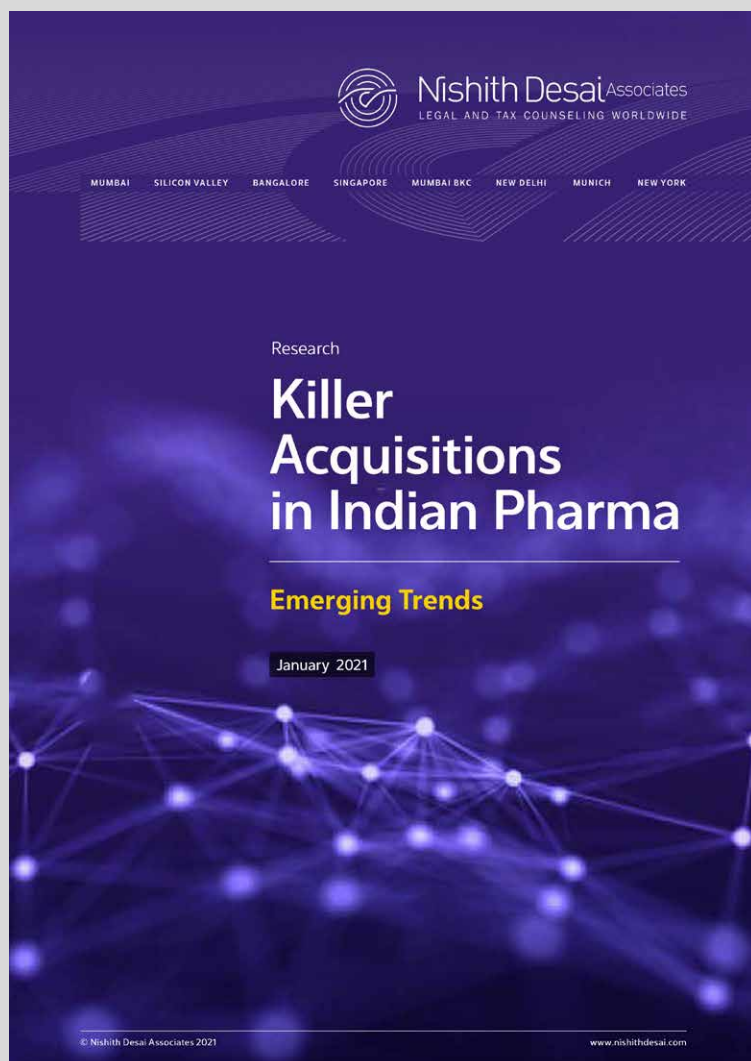


July 2022

Nanomedicine

De-Coding Nano-Regulation in India and Considerations for the Future

This paper is a first of its kind where we have analysed numerous international legislations governing or seeking to govern nanomedicine to understand the possible approach that may be adopted in regulating nanomedicine in India based on their proposed use.



January 2021

Killer Acquisitions in Indian Pharma

Emerging Trends

The paper discusses how killer acquisitions are a topical issue in the pharmaceutical and life sciences sector in India and provides an insight into the competition regulations surrounding killer acquisitions in India.



May 2020

Investment in Healthcare

Legal, Regulatory and Tax Overview

This paper discusses the implications of foreign investment in hospitals and other healthcare services especially medical device, diagnostics, and e-Health.

The paper also discusses the India's flagship healthcare program the Prime Minister Jan Arogya Yojana, popularly known as Ayushman Bharat and how it can aid in the growth of the healthcare sector in India.



June 2019

Are we ready for Designer Babies?

Analysis of Law, Policy and Ethics surrounding
Germline Genetic Engineering

Strategic, Legal, Tax and Ethical Issues

The paper discusses the legal and regulatory framework applicable to germ line gene editing, with specific emphasis on its application to produce designer babies.

It also discusses some of the pressing ethical and social issues that surface in context of producing designer babies. The paper also provides a comparative analysis of the legal position on germ line gene editing adopted by USA, UK, China and Japan has also been undertaken.



HR (Employment and Labour) Laws

HR (Employment and Labour) Laws

PRACTICE NOTE

THOMSON REUTERS
PRACTICAL LAW™

Changing Terms of Employment (India)
 by Vikram Shroff, Nipasha Mahanta, and Sayantani Saha, Nishith Desai Associates
 Status: Law stated as at 01-Jul-2023 | Jurisdiction: India
 This document is published by Practical Law and can be found at: uk.practicallaw.tr.com/w-038-2861
 Request a free trial and demonstration at: uk.practicallaw.tr.com/about/freetrial

A Practice Note dealing with the legal and practical considerations that arise when an employer wishes to change the terms of an employee's (or a number of employees') employment contracts in India. This Note addresses what changes an employer is permitted to make and whether an employer can make any unilateral changes.

An employee's terms of employment change during their employment. For example, annual pay increases and promotions are likely to constitute changes to the employment contract.

Occasionally, however, either the employer or the employee may wish to make changes to the employment contract that the other party may not want to accept. This Note focuses on how the law in India regulates the way in which employers may make changes to terms of employment and the remedies available to the employee when the employer makes unilateral changes to their employment contract.

Terms of Employment

In India, employment relationships may be express or implied. It is not mandatory to have a written employment contract. There is no prescribed format for an employment contract.

There is no legal definition of "terms of employment" under India's labour laws. Terms of employment are typically determined by:

- Employment contracts.
- Employer's human resources (HR) policies.
- Applicable laws.

Some Indian states, such as Karnataka and Delhi, require employers to issue appointment orders providing certain information in their terms of employment (Section 6A, Karnataka Shops and Commercial Establishments Act, 1961; Section 34, Delhi Shops and Establishments Act, 1954).

There are laws in India governing:

- Payment of wages, bonus, and gratuity.
- Minimum wages.

- Minimum requirements on leaves, holidays, and working hours.
- Resolution of industrial disputes.

The Industrial Employment (Standing Orders) Act, 1946 (Standing Orders Act) applies to all factories and commercial establishments in certain states, including Karnataka, Haryana, and Tamil Nadu. The Standing Orders Act requires covered employers to follow certain minimum standards for employment conditions, which are set out in model standing orders. Employment conditions covered by the model standing orders include:

- Classification of workmen.
- Publication of working hours, holidays, pay days, and wage rates.
- Shifts.
- Work from home.
- Attendance.
- Rights and liabilities of employers and workmen.
- Transfer policy.
- Medical aid and examination.
- Secrecy.
- Disciplinary action.
- Grounds of suspension and termination from employment.
- Redressal mechanisms.

(Sections 2(g) and 3(2), Standing Orders Act.)

The Standing Orders Act covers workmen (non-managers) in 'industrial establishments' (as defined under Payment of Wages Act, 1936) employing at least 100 workmen. However, the definition of

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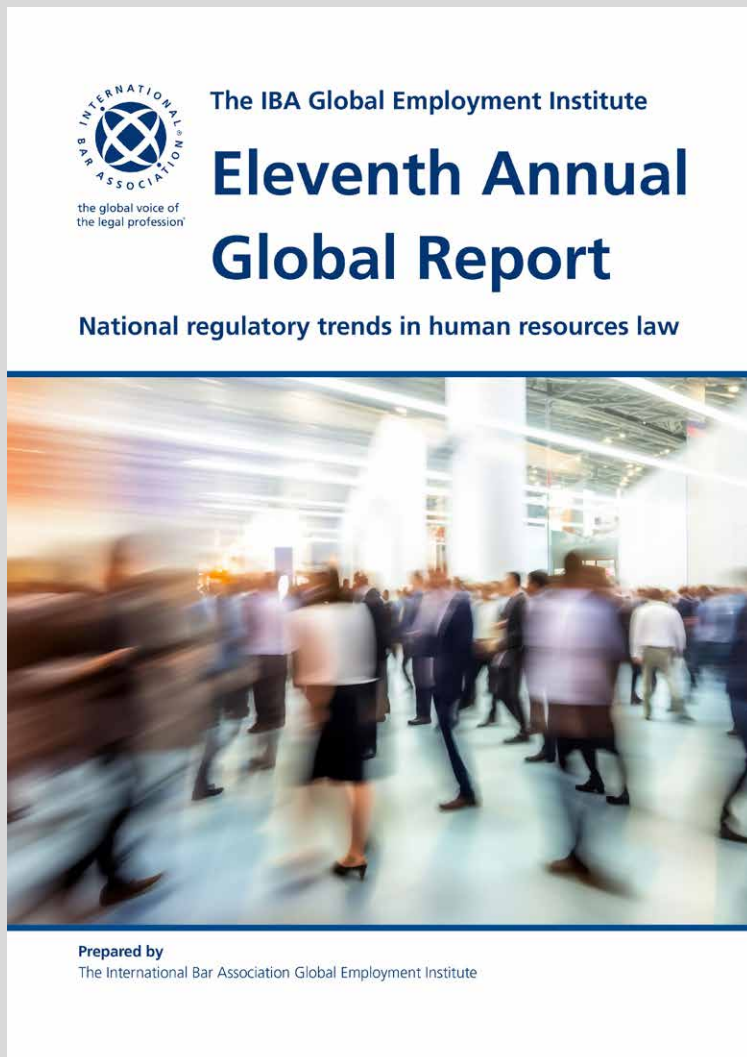


July 2023

Changing Terms of Employment (India)

Practical Law

In this paper, we discuss the aspect of changing the terms of employment and legal issues involved therein.



June 2023

Eleventh Annual Global Report

National regulatory trends in human resources law

This is a comprehensive guide deals with trends and developments in human resources law space in India.



HR (Employment and Labour) Laws

PRACTICE NOTE

THOMSON REUTERS
PRACTICAL LAW™

Individual Employee Termination (India)

by Nipasha Mahanta, Sayantani Saha, and Vikram Shroff, Nishith Desai Associates

Status: Law stated as at 01-May-2023 | Jurisdiction: India

This document is published by Practical Law and can be found at: uk.practicallaw.tr.com/w-035-3396
Request a free trial and demonstration at: uk.practicallaw.tr.com/about/freetrial

A Practice Note addressing the legal and practical issues that arise when terminating the employment of individuals in India.

This Note considers the reasons enabling lawful individual employee termination as well as what constitutes an unlawful termination. It also addresses the procedures for individual employee terminations and best practices to minimise the risk of legal challenges.

There are several important legal issues to consider when an employer or employee is seeking to terminate employment in India. These include the reason for termination, any process that must be followed, the termination payments which may be owed to the employee, and when a termination is unlawful.

This Note sets out the key details on these topics and explains which laws underpin them. It explains the concept of retrenchment and distinguishes between how the law on termination applies to workmen and non-workmen. The Note also outlines redundancy as a ground for termination and the courts' position on this, and how the law on termination applies to an employee on probation.

Relevant Laws on Termination

In India, employment can only be terminated for a reasonable cause or misconduct (see Misconduct). The concept of "at-will" employment is not recognised under Indian law.

The Industrial Disputes Act, 1947 (ID Act) and the corresponding state-specific rules provide for employment termination (retrenchment (see Retrenchment)). Additionally, several state-specific labour laws (applicable to commercial establishments) also contain employment termination provisions.

The terms of employment as contained in the employer's standing orders (a set of terms and conditions of employment as envisaged under the Industrial Employment (Standing Orders) Act, 1946 (IESOA), if any), employment contract, and HR policies must also be considered. Generally, provisions in the employment contract that are more favourable to the employee will override the law.

There is no legal requirement to engage in consultation or have collective bargaining agreements with trade unions, unless the employer has recognised any trade union in the establishment (that is, it accepts a particular trade union having a representative character in its workforce).

The ID Act applies only to employees categorised as "workmen". Workmen are individuals employed to do any manual, unskilled, skilled, technical, operational, clerical, or supervisory work for hire or reward (section 2(s), ID Act). A workman excludes any employee primarily engaged in a managerial or administrative capacity, or in a supervisory capacity earning wages exceeding INR10,000 per month.

No distinction exists between individual terminations and collective or mass terminations under Indian labour law. In cases of reduction-in-force, there are certain specific provisions under the law with which the employer must comply (see Redundancy).

For non-workmen category employees, termination takes place as per the statutory state-specific notice requirements, the employee's contract, and the establishment's HR policies, as there is no central law which applies to termination of non-workmen.

Reasons for Termination

Indian laws permit termination of employment for misconduct (see Misconduct).

Additionally, Indian courts have generally recognised the following as reasonable causes for termination of employment:

- Non-performance.
- Redundancy.

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May 2023

Individual Employee Termination (India)

Practical Law

In this paper we discuss the legal and practical issues that arise when terminating the employment of individuals in India.

HR (Employment and Labour) Laws

PRACTICE NOTE

THOMSON REUTERS
PRACTICAL LAW™

Recovering Monies from an Employee by Making Deductions from Pay (India)

by P Vivek Ilawat, Sayantani Saha, and Vikram Shroff, Nishith Desai Associates.

Status: Law stated as at 01-Jan-2023 | Jurisdiction: India

This document is published by Practical Law and can be found at: uk.practicallaw.tr.com/W-036-6436
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A Practice Note discussing when and how an employer can recover monies from an employee by making deductions from pay in India. This Note describes the regulations regarding deductions from pay, which deductions are prohibited and which are required, the different methods of making deductions, the limitations on deductions, and the tax considerations of making deductions.

Under certain circumstances, an employer can recover owed or outstanding payments from an employee by making deductions from payments of wages or salary over a period of time or on termination of employment. However, there are limitations on what deductions, and when deductions, can be made from an employee's wages or salary.

This Note covers what constitutes wages, deductions permitted by law, unlawful deductions, common instances when an employer may want to seek to recover monies owed by an employee, and the practical considerations and challenges when seeking to do so.

It does not cover in detail, deductions from pay required by law (such as income tax and social security) or those related to court-ordered garnishments, industrial action, disciplinary proceedings, or payments to third parties (such as payments to a pension, benefits provider, or trade union).

Regulation of Deductions from an Employee's Pay

Payment of wages and permissible deductions from wages in India are primarily governed by:

- The Payment of Wages Act, 1936 (PoWA).
- Relevant national and state-level rules.

The PoWA only allows employers to make certain kinds of deductions from an employee's wages and up to certain limits (see Deductions Required or Authorised by Statute and Limitations on Recoveries and Deductions). The PoWA has been extended to shops and commercial establishments (as defined in each state-specific Shops and Establishment Act) in certain Indian states such as:

- Karnataka (Bangalore).
- Haryana (Gurgaon).
- Tamil Nadu (Chennai).

There are also provisions relating to payment of wages and deductions under state-specific Shops and Establishments Acts in select states, such as Telangana and Uttar Pradesh.

India is in the process of codifying its labour laws into four separate labour codes. The Code on Wages, 2019 (Wages Code), once in effect, will repeal and replace the PoWA.

Protected Employees

The PoWA applies to factories and certain "industrial or other establishments". Industrial or other establishments include:

- Mines.
- Plantations and quarries.
- Establishments notified by the appropriate state government.

(Section 2(ii), PoWA.)

The PoWA applies to employees employed in these working environments who earn a monthly wage (that is, wages before deductions) of up to INR24,000 (Section 1(6), PoWA).

States such as Haryana (Gurgaon) and Tamil Nadu (Chennai) have extended the PoWA to employees employed in shops and commercial establishments in the state, subject to specific conditions.

Some states such as Karnataka (Bangalore) have made the PoWA applicable to all employees covered under the state-specific Shops and Establishments Act.

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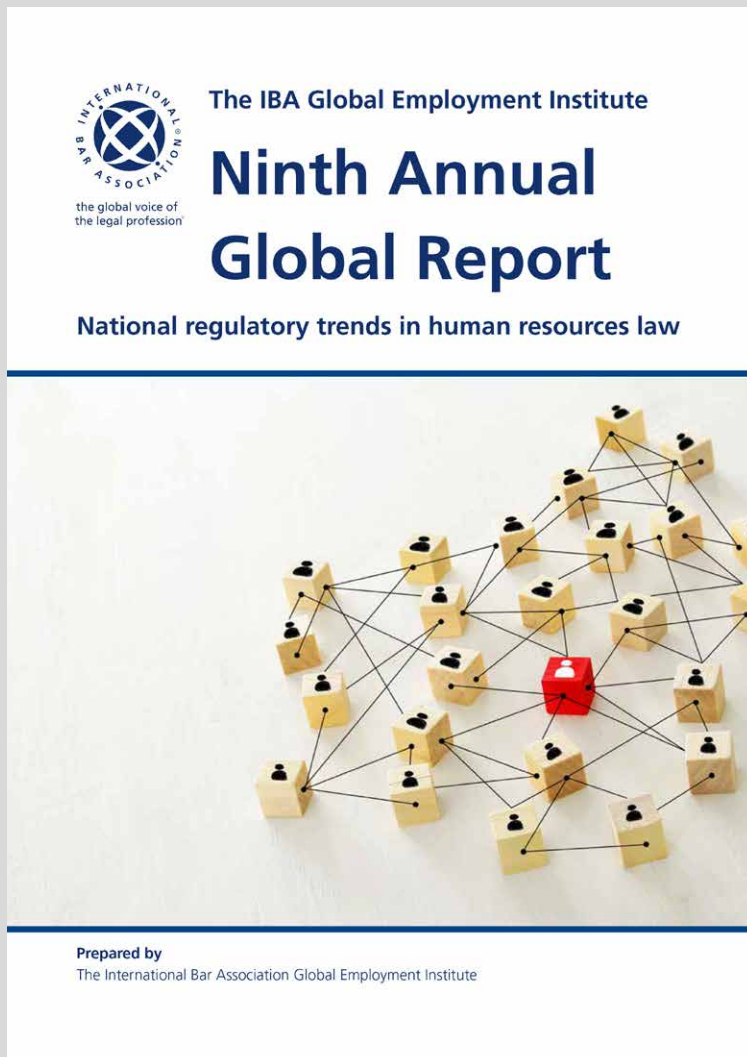


January 2023

Recovering Monies from an Employee by Making Deductions from Pay

Practical Law

This paper describes the regulations regarding deductions from pay, which deductions are prohibited and which are required, the different methods of making deductions, the limitations on deductions, and the tax considerations of making deductions.



August 2021

Ninth Annual Global Report

National regulatory trends in human resources law

Our research paper on “Annual Global Report” which is an annual report prepared by the IBA Global Employment Institute (GEI) highlights specific general international trends in human resources law.

This is the ninth AGR and is based on responses from lawyers in 50 countries. It covers trends in human resources law during the calendar year 2019 and, in some cases, the beginning of 2020.



HR (Employment and Labour) Laws



December 2020

Prevention of Sexual Harassment at the Workplace (POSH)

Legal and HR Considerations

This paper discusses the POSH Act and other relevant laws in India pertaining to workplace sexual harassment. It also discusses the importance of 'prevention' as the best tool for elimination of sexual harassment in a multi-cultural society as ours.

HR (Employment and Labour) Laws

COUNTRY Q&A

THOMSON REUTERS
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Mutual termination agreement and release (employment)
Q&A: India
 by Sayantani Saha and Preetha Soman, Nishith Desai Associates
 Status: Law stated as at 30-Sep-2020 | Jurisdiction: India
 This document is published by Practical Law and can be found at: uk.practicallaw.tr.com/w-007-4181
 Request a free trial and demonstration at: uk.practicallaw.tr.com/about/freetrial

India specific information concerning the key legal and commercial issues to be considered when drafting mutual termination agreements for use internationally.

This Q&A provides country-specific commentary on [Practice note, Mutual termination agreements \(employment\): International](#), and forms part of [Cross-border employment](#).

See also [Standard document, Mutual termination agreement \(employment\): International](#), with country specific drafting notes.

Form of settlement

1. In your jurisdiction, how can parties record a mutual termination agreement between them?

In India, mutual termination is achieved by executing a mutual separation agreement between the parties.

2. What is the name used for the type of agreement that records the termination of employment where a current or former employee agrees to waive or settle a claim (or more usually, all possible claims) against the employer in return for a payment?

The agreement that records a mutual termination of employment and a waiver and release of claims (in consideration of receipt of an ex gratia payment) is known as a mutual separation agreement.

For former employees, a waiver and release of claims letter is typically used instead of a mutual separation agreement. This letter may also serve as a reminder of the ex-employee's post-termination obligations towards the company (for example, non-disclosure of confidential information, among other things). (It should be noted that is unlikely that an employee whose contract is being terminated against their will, will agree to sign a waiver and release letter.)

However, it should be noted that a waiver of one's statutory rights (that is, the right to sue or right to enforce one's statutory claims) through a contract or otherwise is void in India. Therefore, while it is common to include a waiver of statutory claims clauses in the

separation documents, as a deterrent, such a provision is not in fact be enforceable.

Statutory obligations

3. Are there any legal requirements for employment termination agreements in your jurisdiction?

No, there are no specific legal requirements for employment termination agreements in India.

In India, the most common form of employment separation is either:

- An employee resignation (at the behest of the employee).
- Termination of employment (at the behest of the employer).

While there is legislation governing termination of employment, it does not cover the scenario of mutual separations very clearly. Mutual termination of employment is typically achieved in India through mutual separation agreements executed between the employer and employee, and such agreements remain largely untested in Indian courts.

Scope of settlement

4. Are there any restrictions on the type of disputes which can be settled by parties in an agreement on termination of employment?

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September 2020

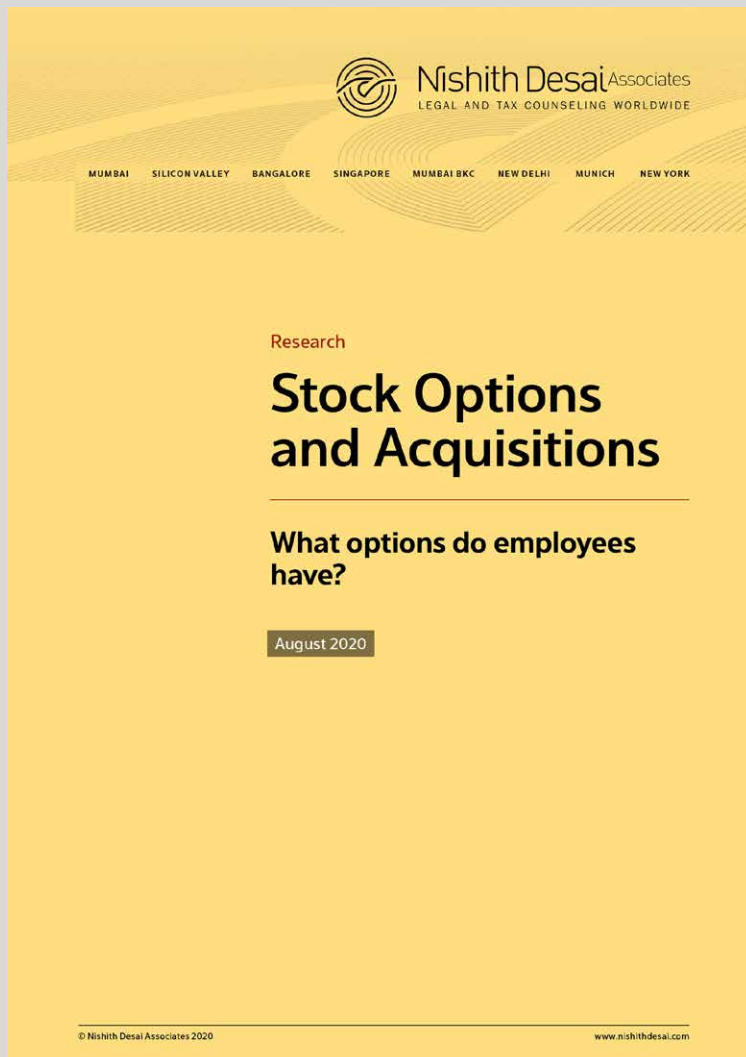
Mutual termination agreement and release (employment)

Q&A: India

Practical Law

Our research paper in the questionnaire format discusses the India-specific information concerning the key legal and commercial issues to be considered when drafting mutual termination agreements for use internationally.

HR (Employment and Labour) Laws

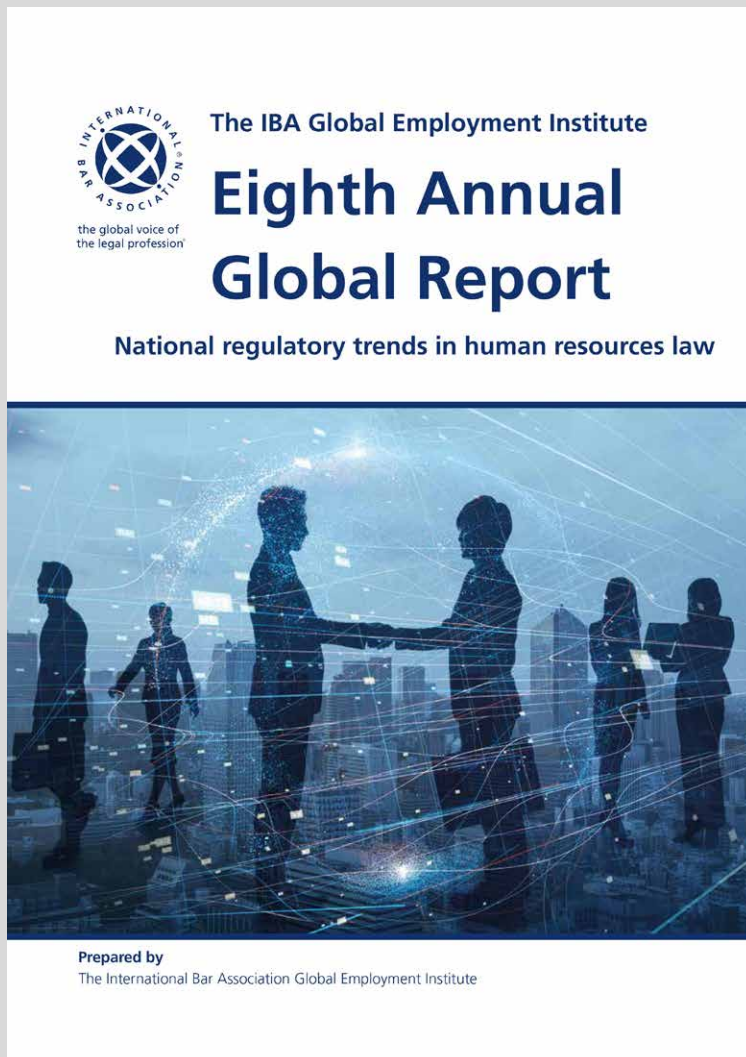


August 2020

Stock Options and Acquisitions

What options do employees have?

The paper discusses the legal framework surrounding the issuance of ESOPs in India. It also discusses the ESOPs in share acquisitions.



December 2019

Eighth Annual Global Report

National regulatory trends in human resources law

The Annual Global Report (AGR) is an annual report prepared by the IBA Global Employment Institute (GEI) highlighting certain general international trends in human resources law.



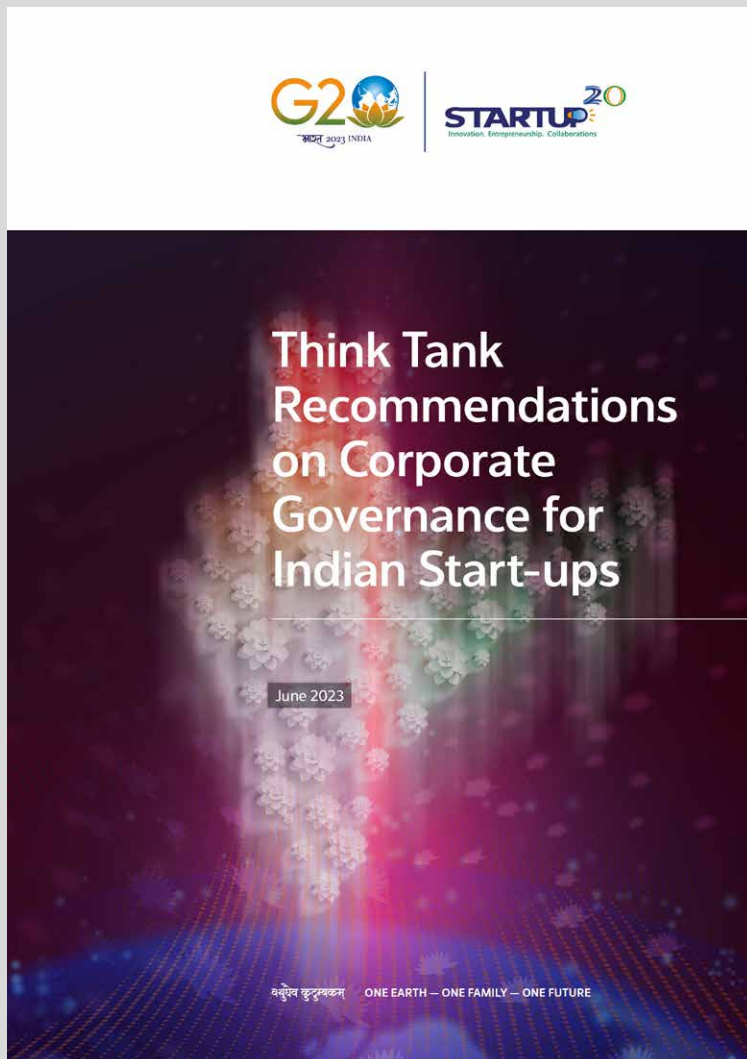
November 2019

India: Trade Unions and Collective Bargaining

The paper discusses the history of trade unions in India and the potential for growth in trade union represented workers is huge. The paper also discusses certain recent developments and their implications.



Doing Business in India



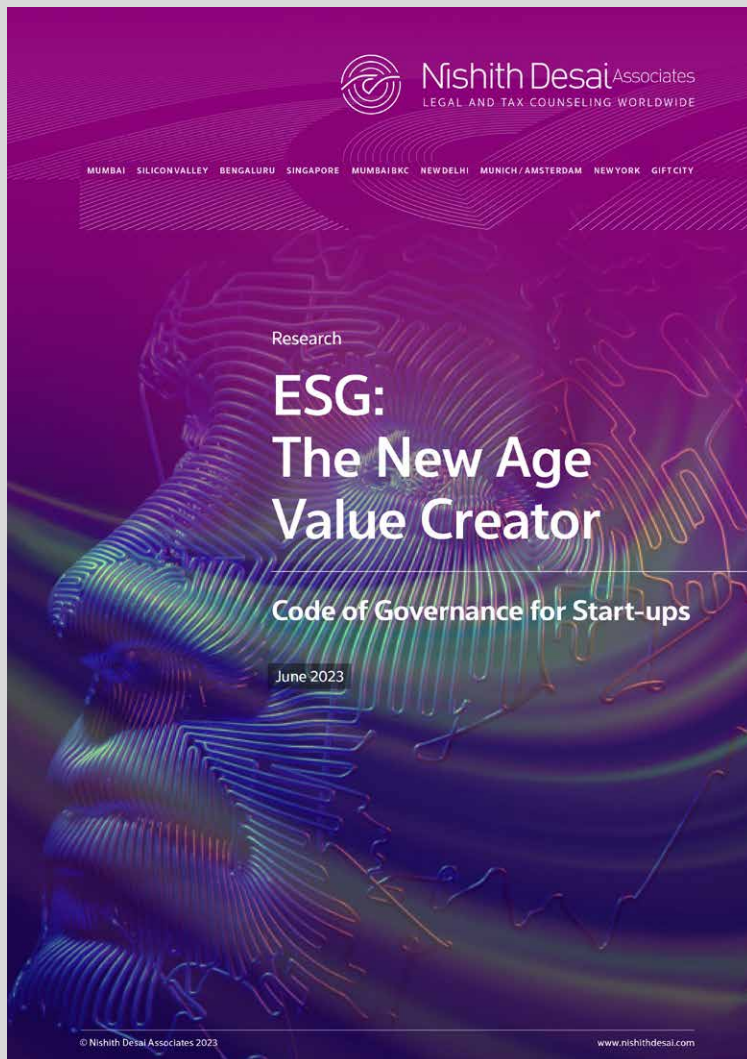
June 2023

Corporate Governance for Indian Start-ups

A comprehensive guide that offers a clear approach to establish effective governance practices in a company.



Doing Business in India



June 2023

ESG: The New Age Value Creator**Code of Governance for Start-ups**

Key ESG issues faced by start-ups and how to inculcate the trend of governance from an early stage.



Doing Business in India



January 2023

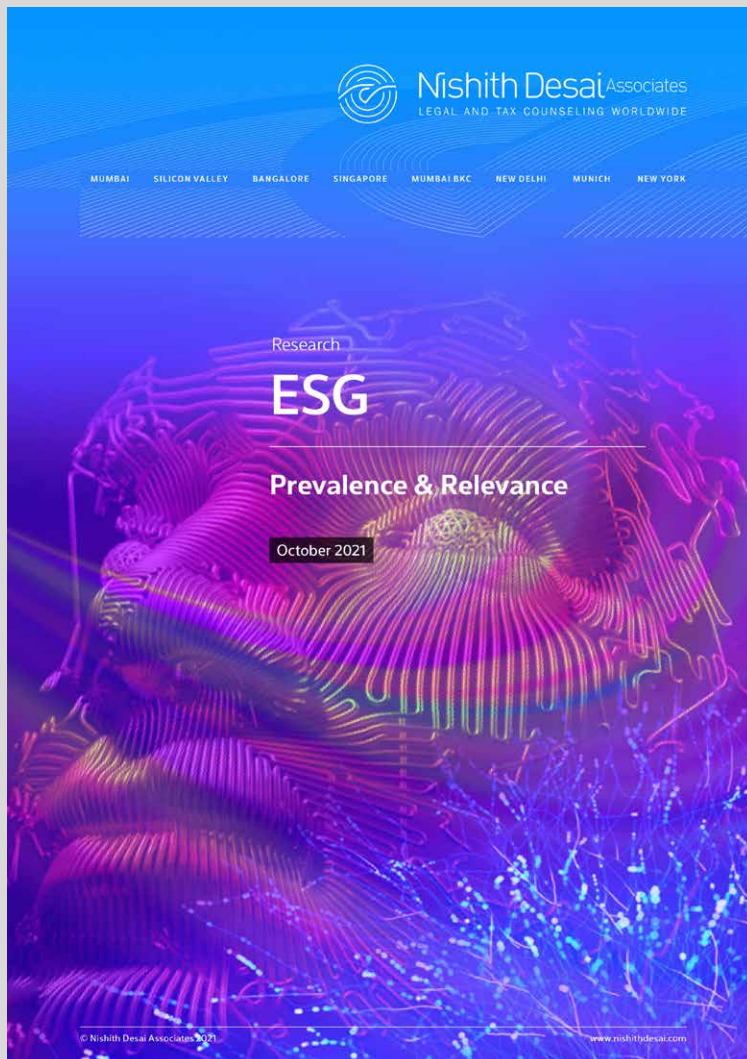
Doing Business in India

The Guide for US Businesses and Organizations Entering and Expanding into India

India, a country known for its diverse culture, is emerging as a preferred destination for businesses across the globe. However, doing business in India is not without its challenges.

With this paper, we aim to provide a comprehensive guide for new businesses setting up in India or foreign investors looking to set up businesses in India. The paper will cover the regulatory, legal, and tax laws and implications that businesses need to consider.

Doing Business in India



October 2021

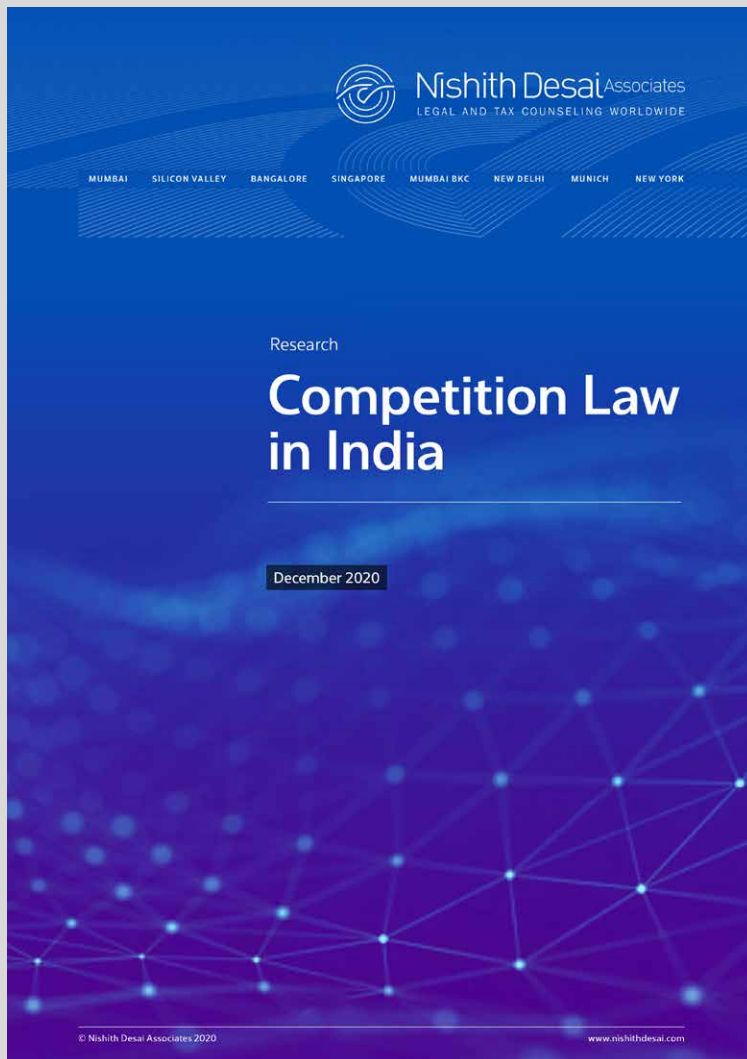
ESG

Prevalence and Relevance

The relevance of sustainability as a significant trend in financial markets in the present time cannot be overlooked. The philosophy of corporations being mindful of, and responsive to their impact on society and environment has been growing a strong support.

This paper discusses the future of ESG Reporting and Investments.

Doing Business in India

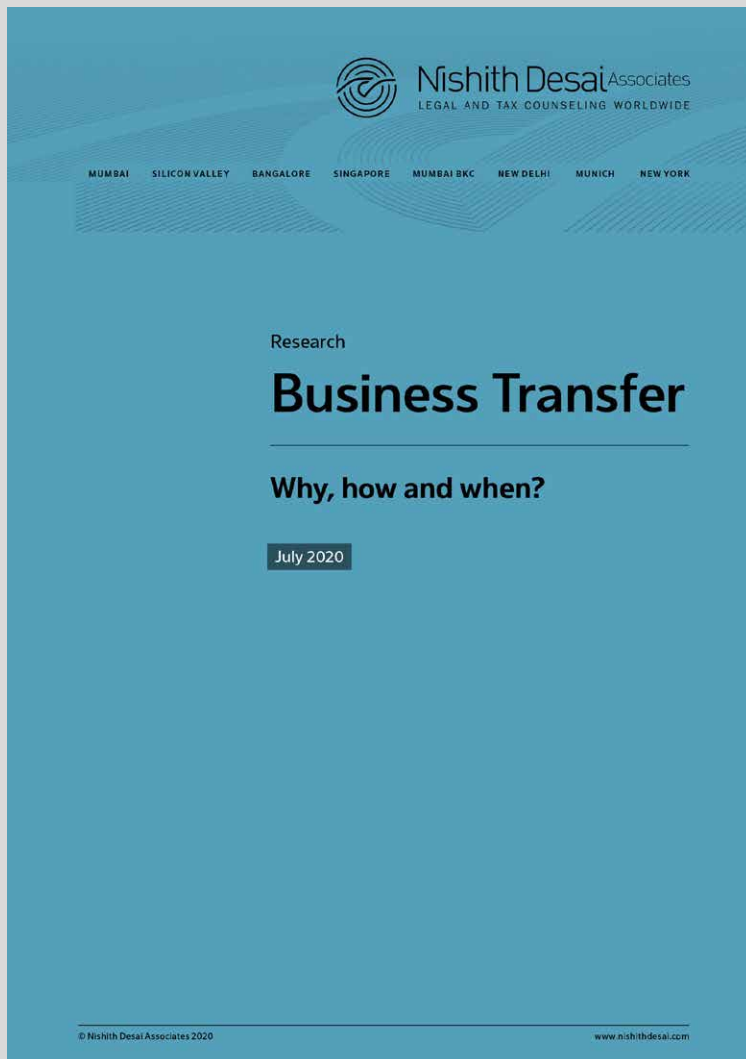


December 2020

Competition Law in India

This paper discusses the development of the Competition Law framework in India. The paper also reviews the developments that have been pronounced and effectuated by the CCI and the NCLAT, in regulating the market practices in India.

Doing Business in India



July 2020

Business Transfer**Why, how and when?**

This paper examines, basic structure of a 'business transfer', how it differs from other modes of asset sale and the merits and demerits over other modes of acquisition.

It explains the legal, tax and regulatory implications of a 'business transfer' and also discusses 'share transfer' in detail.

Doing Business in India

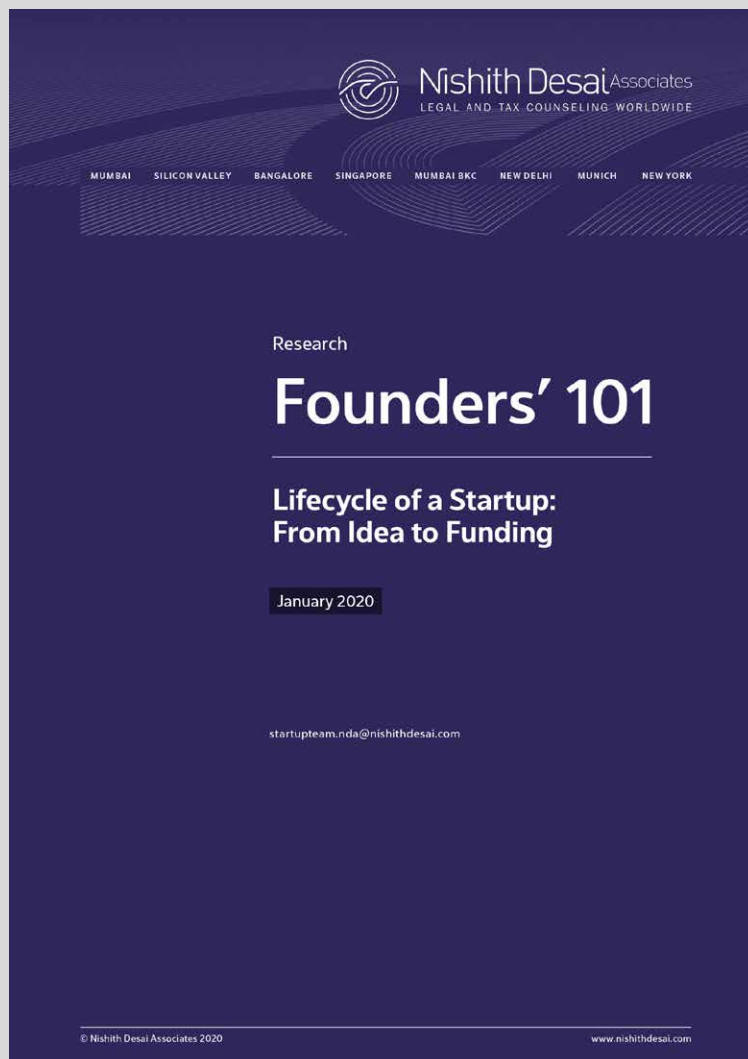


March 2020

Impact of Covid-19 on Contracts**Indian Law Essentials**

This paper attempts to focus on the impact of Covid-19 on performance of contracts, governed by Indian law. It also sets out practical considerations that could help businesses in these tough times.

Doing Business in India



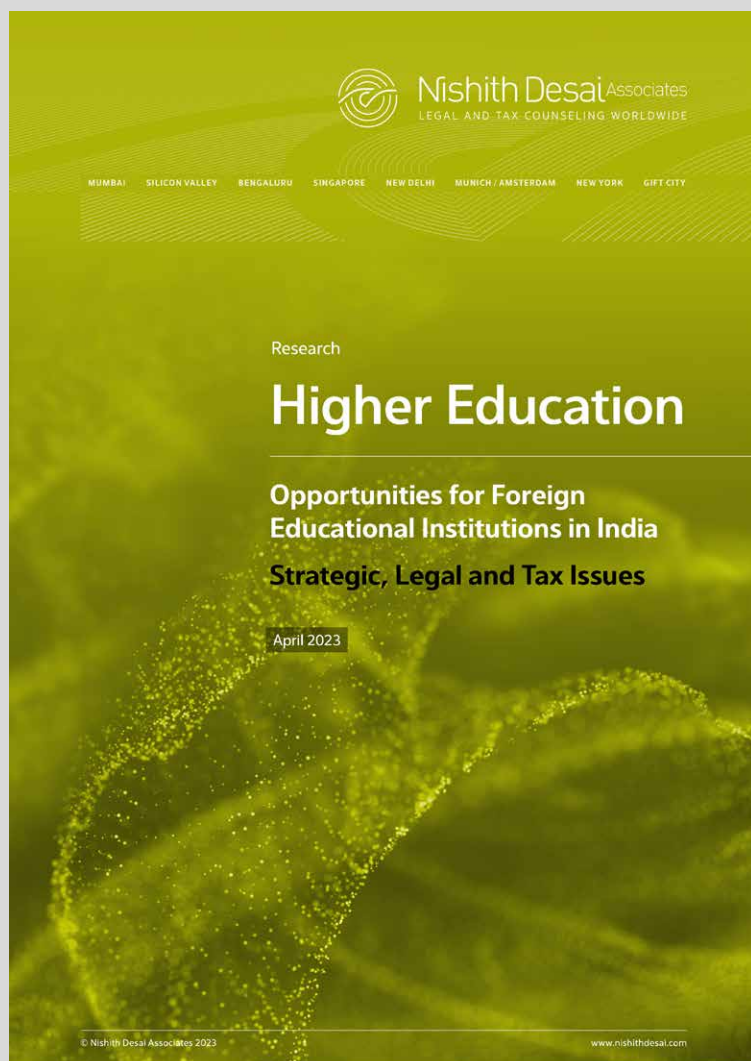
January 2020

Founders' 101**Lifecycle of a Startup: From Idea to Funding**

The paper discusses the various stages in the lifecycle of a start-up from its incorporation to funding rounds.

Education

Education



April 2023

Higher Education

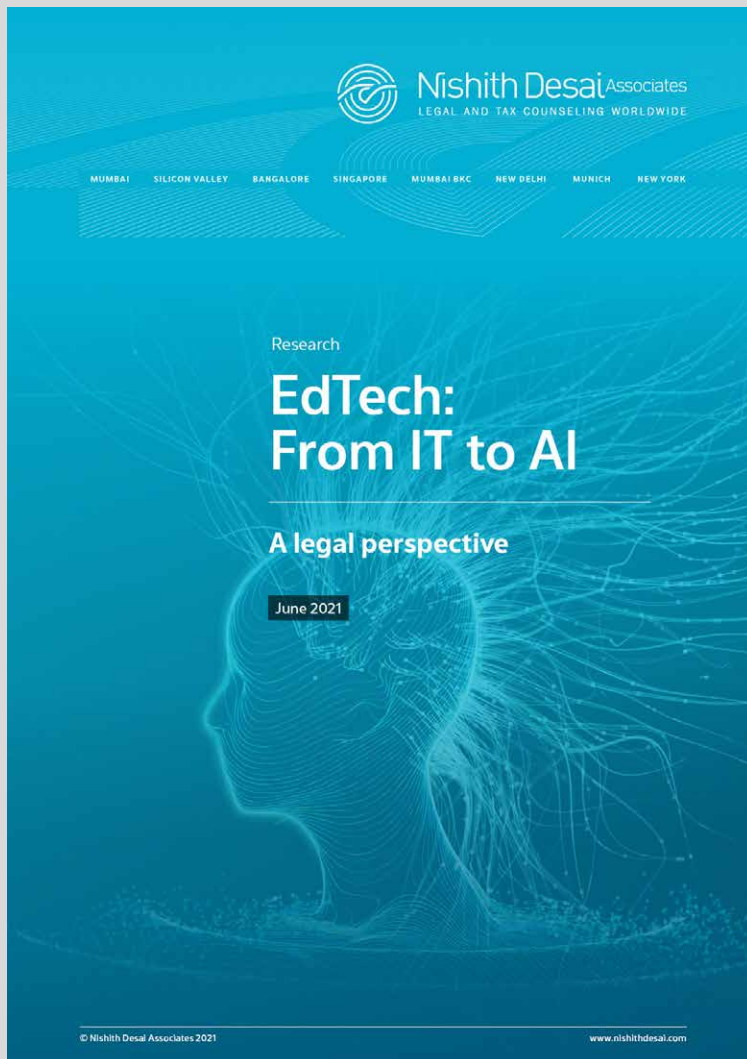
Opportunities for Foreign Educational Institutions in India

Strategic, Legal and Tax Issues

In this paper, we have analyzed and discussed the regulatory landscape in India with respect to higher education. The various progressive legislations, together with the opportunity that India offers, provide many options for FEIs to consider India.

Our emphasis is on how this landscape provides opportunities to FEIs who are looking for potential collaboration and/or growth opportunities in India.

Education



June 2021

EdTech: From IT to AI

A legal Perspective

This paper discusses how Robots, artificial intelligence (AI) and Deep Learning are fast becoming a reality.

Explored are some of the EdTech businesses and the relevant legal issues which may be considered by such businesses.

Education



February 2020

Investment in Education

The paper discusses the various challenges faced by Investors in the education sector and the latest reforms in the education industry.

It also discusses how the education industry might see considerable growth in the future.

About NDA

At Nishith Desai Associates, we have earned the reputation of being Asia's most Innovative Law Firm — and the go-to specialists for companies around the world, looking to conduct businesses in India and for Indian companies considering business expansion abroad. In fact, we have conceptualized and created a state-of-the-art Blue Sky Thinking and Research Campus, Imaginarium Aligunjan, an international institution dedicated to designing a premeditated future with an embedded strategic foresight capability.

We are a research and strategy driven international firm with offices in Mumbai, Palo Alto (Silicon Valley), Bengaluru, Singapore, New Delhi, Munich, and New York. Our team comprises of specialists who provide strategic advice on legal, regulatory, and tax related matters in an integrated manner basis key insights carefully culled from the allied industries.

As an active participant in shaping India's regulatory environment, we at NDA, have the expertise and more importantly — the VISION — to navigate its complexities. Our ongoing endeavors in conducting and facilitating original research in emerging areas of law has helped us develop unparalleled proficiency to anticipate legal obstacles, mitigate potential risks and identify new opportunities for our clients on a global scale. Simply put, for conglomerates looking to conduct business in the subcontinent, NDA takes the uncertainty out of new frontiers.

As a firm of doyens, we pride ourselves in working with select clients within select verticals on complex matters. Our forte lies in providing innovative and strategic advice in futuristic areas of law such as those relating to Blockchain and virtual currencies, Internet of Things (IOT), Aviation, Artificial Intelligence, Privatization of Outer Space, Drones, Robotics, Virtual Reality, Ed-Tech, Med-Tech and Medical Devices and Nanotechnology with our key clientele comprising of marquee Fortune 500 corporations.

The firm has been consistently ranked as one of the Most Innovative Law Firms, across the globe. In fact, NDA has been the proud recipient of the Financial Times–RSG award 4 times in a row, (2014-2017) as the Most Innovative Indian Law Firm.

We are a trust based, non-hierarchical, democratic organization that leverages research and knowledge to deliver extraordinary value to our clients. Datum, our unique employer proposition has been developed into a global case study, aptly titled 'Management by Trust in a Democratic Enterprise,' published by John Wiley & Sons, USA.

Research@NDA

Research is the DNA of NDA. In early 1980s, our firm emerged from an extensive, and then pioneering, research by Nishith M. Desai on the taxation of cross-border transactions. The research book written by him provided the foundation for our international tax practice. Since then, we have relied upon research to be the cornerstone of our practice development. Today, research is fully ingrained in the firm's culture.

Over the years, we have produced some outstanding research papers, reports and articles. Almost on a daily basis, we analyze and offer our perspective on latest legal developments through our "Hotlines". These Hotlines provide immediate awareness and quick reference, and have been eagerly received. We also provide expanded commentary on issues through detailed articles for publication in newspapers and periodicals for dissemination to wider audience. Our NDA Labs dissect and analyze a published, distinctive legal transaction using multiple lenses and offer various perspectives, including some even overlooked by the executors of the transaction. We regularly write extensive research papers and disseminate them through our website. Our ThinkTank discourses on Taxation of eCommerce, Arbitration, and Direct Tax Code have been widely acknowledged.

As we continue to grow through our research-based approach, we now have established an exclusive four-acre, state-of-the-art research center, just a 45-minute ferry ride from Mumbai but in the middle of verdant hills of reclusive Alibaug-Raigadh district. Imaginarium AliGunjan is a platform for creative thinking; an apolitical ecosystem that connects multi-disciplinary threads of ideas, innovation and imagination. Designed to inspire 'blue sky' thinking, research, exploration and synthesis, reflections and communication, it aims to bring in wholeness — that leads to answers to the biggest challenges of our time and beyond. It seeks to be a bridge that connects the futuristic advancements of diverse disciplines. It offers a space, both virtually and literally, for integration and synthesis of knowhow and innovation from various streams and serves as a dais to internationally renowned professionals to share their expertise and experience with our associates and select clients.

We would love to hear from you about any suggestions you may have on our research publications. Please feel free to contact us at research@nishithdesai.com.

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