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Research

Compendium of Research Papers

Clickable catalogue of publications

January 2022

Welcome to the world of research at Nishith Desai Associates.

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.

We are pleased to bring you a compendium of our research papers. Just click on the QR code beside the thumbnail of any paper, to access your copy of these papers.

We sincerely hope you enjoy reading these papers.

Stay connected....

From all of us at NDA

A handwritten signature in blue ink, featuring a large, stylized 'N' and 'D' followed by a horizontal line and a small flourish.

Nishith Desai
nishith@nishithdesai.com

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Automation, Aerial Transport & Convergence

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CENTRE FOR TAX LAWS,
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Tax, Trade and Investments

An Indian Policy Perspective

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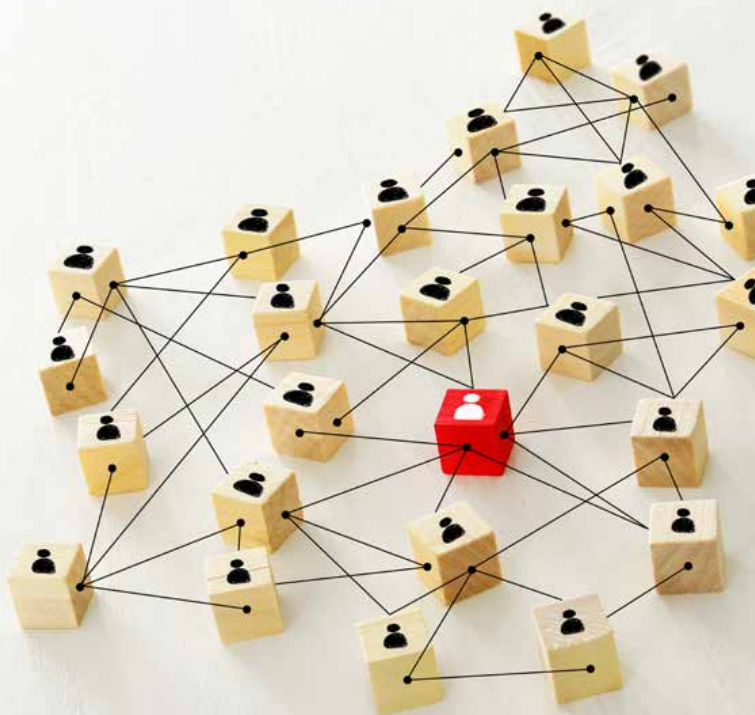


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Ninth Annual Global Report

National regulatory trends in human resources law



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A legal perspective

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**The Guide for US Businesses
and Organizations entering and
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IBA TOOLKIT ON INSOLVENCY AND ARBITRATION
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NATIONAL REPORT OF INDIA



Alipak Banerjee

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* I would like to thank Mr. Arjun Gupta, my colleague in the International Dispute Resolution practice, at Nishith Desai Associates for helping me with the responses. For the avoidance of doubt, this report is not intended to provide legal advice applicable to specific fact situations.



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'Without Prejudice' Privilege

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Attorney - Client Privilege

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Opportunities in GIFT City

Setting up Funds in India's New Offshore Financial Centre

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Prevention of Sexual Harassment at the Workplace (POSH)

Legal & HR Considerations



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Mediation

The Go-To Dispute Resolution Mechanism in India!

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Vodafone Holdings B.V. versus Republic of India (International Investment Treaty Arbitration)



Case Analysis & Implications for Foreign
Investors

(With a helpful recap of the Indian investment
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The Future of Medical Practice?

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5G Technology in India

Strategic, Legal and Regulatory Considerations

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Fund Formation: Attracting Global Investors

**Global, Regulatory and Tax
Environment impacting India
focused funds**

October 2020



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**

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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



serve as a reminder of termination obligations (e.g., non-disclosure of other things). (It should be noted that an employee whose resignation is not in their will, will not be bound by the letter.)

A waiver of one's right to sue or right to terminate 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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What options do employees have?

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Why, how and when?

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An Introduction

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WITH INPUTS FROM -





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Domestic and Foreign

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Founders' 101

Lifecycle Of A Startup: From Idea To Funding

January 2020

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India: Trade Unions and Collective Bargaining

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Legal and Tax Analysis

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International Investment Treaty Arbitration and India

**With special focus on India
Model BIT, 2016**

April 2019





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Strategic and legal issues

October 2019





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Are we ready for Designer Babies?

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**Strategic, Legal, Tax and Ethical
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**Re-Shaping the Transportation
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**Strategic, Legal, Tax and Ethical
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Building a Successful Blockchain Ecosystem for India

Regulatory Approaches to Crypto-Assets

An independent submission to the
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December 2018

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Industry Applications and Legal Perspectives

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The Future is here: Artificial Intelligence and Robotics

May 2018



About NDA

We are an India Centric Global law firm (**www.nishithdesai.com**) with four offices in India and the only law firm with license to practice Indian law from our Munich, Singapore, Palo Alto and New York offices. We are a firm of specialists and the go-to firm for companies that want to conduct business in India, navigate its complex business regulations and grow. Over 70% of our clients are foreign multinationals and over 84.5% are repeat clients.

Our reputation is well regarded for handling complex high value transactions and cross border litigation; that prestige extends to engaging and mentoring the start-up community that we passionately support and encourage. We also enjoy global recognition for our research with an ability to anticipate and address challenges from a strategic, legal and tax perspective in an integrated way. In fact, the framework and standards for the Asset Management industry within India was pioneered by us in the early 1990s, and we continue to remain respected industry experts.

We are a research based law firm and have just set up a first-of-its kind IOT-driven Blue Sky Thinking & Research Campus named Imaginarium AliGunjan (near Mumbai, India), dedicated to exploring the future of law & society. We are consistently ranked at the top as Asia's most innovative law practice by Financial Times. NDA is renowned for its advanced predictive legal practice and constantly conducts original research into emerging areas of the law such as Blockchain, Artificial Intelligence, Designer Babies, Flying Cars, Autonomous vehicles, IOT, AI & Robotics, Medical Devices, Genetic Engineering amongst others and enjoy high credibility in respect of our independent research and assist number of ministries in their policy and regulatory work.

The safety and security of our client's information and confidentiality is of paramount importance to us. To this end, we are hugely invested in the latest security systems and technology of military grade. We are a socially conscious law firm and do extensive pro-bono and public policy work. We have significant diversity with female employees in the range of about 49% and many in leadership positions.



Asia-Pacific:
Most Innovative Law Firm, 2016
Second Most Innovative Firm, 2019
Most Innovative Indian Law Firm, 2019, 2017, 2016, 2015, 2014



Asia Pacific:
Band 1 for Employment, Lifesciences, Tax, TMT,
2021, 2020, 2019, 2018, 2017, 2016, 2015



Tier 1 for Private Equity, Project Development: Telecommunications
Networks, 2020, 2019, 2018, 2017, 2014
Deal of the Year: Private Equity, 2020



Asia-Pacific:
Tier 1 for Dispute, Tax, Investment Funds, Labour & Employment,
TMT, Corporate M&A, 2021, 2020, 2019, 2018, 2017, 2016, 2015,
2014, 2013, 2012



Asia-Pacific:
Tier 1 for Government & Regulatory, Tax, 2020, 2019, 2018.



Ranked
'Outstanding' for Technology, Labour & Employment, Private Equity,
Regulatory, Tax, 2021, 2020, 2019.



Global Thought Leader – Vikram Shroff
Thought Leaders-India – Nishith Desai, Vaibhav Parikh, Dr. Milind
Antani Arbitration Guide, 2021 – Vyapak Desai, Sahil Kanuga



Fastest growing M&A Law Firm, 2018



Asia Mena Counsel: In-House Community Firms Survey:
Only Indian Firm for Life Science Practice Sector, 2018

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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.

Our dedication to research has been instrumental in creating thought leadership in various areas of law and public policy. Through research, we develop intellectual capital and leverage it actively for both our clients and the development of our associates. We use research to discover new thinking, approaches, skills and reflections on jurisprudence, and ultimately deliver superior value to our clients. Over time, we have embedded a culture and built processes of learning through research that give us a robust edge in providing best quality advices and services to our clients, to our fraternity and to the community at large.

Every member of the firm is required to participate in research activities. The seeds of research are typically sown in hour-long continuing education sessions conducted every day as the first thing in the morning. Free interactions in these sessions help associates identify new legal, regulatory, technological and business trends that require intellectual investigation from the legal and tax perspectives. Then, one or few associates take up an emerging trend or issue under the guidance of seniors and put it through our "Anticipate-Prepare-Deliver" research model.

As the first step, they would conduct a capsule research, which involves a quick analysis of readily available secondary data. Often such basic research provides valuable insights and creates broader understanding of the issue for the involved associates, who in turn would disseminate it to other associates through tacit and explicit knowledge exchange processes. For us, knowledge sharing is as important an attribute as knowledge acquisition.

When the issue requires further investigation, we develop an extensive research paper. Often we collect our own primary data when we feel the issue demands going deep to the root or when we find gaps in secondary data. In some cases, we have even taken up multi-year research projects to investigate every aspect of the topic and build unparalleled mastery. Our TMT practice, IP practice, Pharma & Healthcare/Med-Tech and Medical Device, practice and energy sector practice have emerged from such projects. Research in essence graduates to *Knowledge*, and finally to *Intellectual Property*.

Over the years, we have produced some outstanding research papers, articles, webinars and talks. Almost on daily basis, we analyze and offer our perspective on latest legal developments through our regular "*Hotlines*", which go out to our clients and fraternity. 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 *Lab Reports* 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 articles and disseminate them through our website. Our research has also contributed to public policy discourse, helped state and central governments in drafting statutes, and provided regulators with much needed comparative research for rule making. Our discourses on Taxation of eCommerce, Arbitration, and Direct Tax Code have been widely acknowledged. Although we invest heavily in terms of time and expenses in our research activities, we are happy to provide unlimited access to our research to our clients and the community for greater good.

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 your suggestions on our research reports. Please feel free to contact us at research@nishithdesai.com



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