

# International Litigation & Dispute Resolution

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Statement of Practice

April 2017



# 1. Our International Litigation and Dispute Resolution Practice Expertise

Globalization and the growth of international commerce have created an unprecedented need to efficiently resolve cross-border disputes. With the evolution of effective and efficient arbitration systems, complex issues relating to enforcement of foreign arbitration awards and judgments are constantly being deliberated upon. For arbitration to gain prominence as the preferred mode of dispute resolution an in-depth analysis of the various legal issues arising therein is required. Mediation is also gaining popularity as a form of dispute resolution.

At Nishith Desai Associates (“NDA”), we have developed a strong expertise and carved a niche for ourselves in the areas of inbound and outbound litigation, international commercial arbitration and investment treaty arbitration with a strong focus on complex cross-border disputes. We also focus on corporate frauds and white collar crime/economic offences, involving foreign multinationals and foreign directors. Due to our industry focused approach we provide very creative solutions for commercial, regulatory and anti-trust litigations. NDA strives to provide its clients with creative, pragmatic solutions and effective dispute resolution strategies.

We are actively involved in various matters related to Bilateral Investment Treaties, Private International Law, Corporate Laws, Intellectual Property Laws, Employment Laws, Competition and Anti-Trust laws and Commercial Laws; and have represented clients on several litigation matters and provided key pre-litigation strategies to clients in industries such as media, entertainment, infrastructure, pharma, healthcare, cosmetics, franchising, machinery & equipment manufacturing, outsourcing and financial services. We appear before Foreign Arbitral Tribunals, Supreme Court of India, various High Courts in India, various lower courts, the Company Law Board, the Copyright Board, Securities and Exchange Board of India, IPR Tribunals, etc. We have also represented clients before international arbitration centers such as the London Court of International Arbitration (LCIA), Singapore International Arbitration Centre (SIAC), International Chamber of Commerce (ICC), and International Centre for Dispute Resolution (ICDR- AAA) amongst others.

We have strong expertise in handling corporate frauds, white collar crimes/economic offences in various matters related to violation of foreign exchange laws, securities law, import-export norms, data theft, intellectual property theft, insider trading, breach of fiduciary responsibilities, corporate defamation, corporate law non-compliance, money laundering, and corporate corruption. We have advised and assisted clients in several investigations, litigations and pre-litigation strategies in these areas and have represented them before several regulators and investigating agencies including the Enforcement Directorate, Crime Branch of Indian Police, Serious Fraud Investigation office, Special Directorate of Enforcement, Cyber Crime Cell, Securities & Exchange Board of India, Registrar of Companies/Ministry of Company Affairs, United States Securities and Exchange Commission, etc.

We also provide Litigation Project Management services and provide strategic and legal assistance to clients involved in outbound (from India) litigation and also manage global litigations of clients by applying latest project management techniques. We have advised and assisted on several global litigation and outbound litigations for clients involved in media, entertainment, infrastructure, franchising, machinery and equipment manufacturing, outsourcing, art funds and financial services in respect of their disputes in United States, Belgium, Singapore, United Kingdom, Germany, Switzerland, etc.

## 2. Accolades

- Nishith Desai Associates has been declared as the Most Innovative Law Firm in Asia Pacific (2016) at the Innovative Lawyers Asia-Pacific Awards by the Financial Times - RSG Consulting.
- Dispute Resolution Practice of Nishith Desai Associates has been recognized as “Highly Recommended” by Asia Law Profiles, 2016.
- Awarded by IDEX Legal Awards 2015 - Best Dispute Management Law firm of the year.
- Awarded by IDEX Legal Awards 2015 - Best Dispute Management Lawyer of the year (Vyapak Desai).
- Nishith Desai Associates has been declared as the Most Innovative Indian Law Firm in Asia Pacific (2014/2015) at the Innovative Lawyers Asia-Pacific Awards by the Financial Times - RSG Consulting.
- Nishith Desai Associates has been declared as the Second Most Innovative Asia - Pacific Law Firm (2014) at the Innovative Lawyers Asia-Pacific Awards by the Financial Times - RSG Consulting.
- Legal 500 (2011, 2012, 2013, 2014, 2015): No. 1 for International Tax, Investment Funds and TMT.
- Legal 500: *“Nishith Desai Associates advises international banks, corporations, and private equity clients on complex cross-border disputes, and is currently handling arbitration matters.....”*.
- Asian-Mena Counsel ‘In-House Community Firm of the Year’ in India for International Arbitration (2011).
- Listed in the Asian Legal Business Watch list of ‘Top 10 Firms to Watch’ in 2009.
- Recognized by Chambers and Partners as the ‘Most In-Demand Practitioners’.
- Honorable mentions by Asian - Counsel 2011 for International Arbitration.
- Within a decade of setting up, NDA was honored with the ‘Indian Law Firm of the Year’ and in the next year, with ‘Asian Law Firm of the Year (Pro Bono)’ awards by the International Financial Law Review, a Euromoney publication.

## 3. Scope of Services

We advise and have represented clients on:

### I. Arbitration

#### A. International Commercial Arbitration - Foreign Seated

- One of the world's largest communication services group in a multi-million dollar SIAC arbitration pertaining to earn-out and non-compete issues.
- An Indian subsidiary of a Japanese multi-national conglomerate against an India multinational in relation to high-value and complex disputes in two international arbitrations before SIAC.
- Minority shareholders of a pharmaceutical company against its American Joint Venture partner in a multi-million dollar arbitration before SIAC, Singapore.
- India's largest post production house in a multi-million dollar dispute against a private equity investor in Emergency Arbitration before SIAC.
- An Indian cable manufacturer in a multi-million Euro joint venture dispute against its Italian partner before the LCIA, UK.
- World's second largest oilfield services company in an ad-hoc international commercial arbitration seated in London conducted as per UNCITRAL Rules and now representing in enforcement of the foreign award.
- European sovereign fund against its Indian borrower before the Arbitration Institute of the Finland Chamber of Commerce.
- Managing Director of a healthcare sector company in a matter pertaining to illegal termination before the Swiss Chambers of Commerce.
- A private equity fund against Indian conglomerate for an exit dispute before the ICC.
- International mediation under the American Arbitration Association (AAA) and negotiated a successful settlement.

#### B. International Arbitration- India Seated

- One of the biggest real estate investment fund for an exit dispute against Indian Promoters.
- World's largest medical devices, pharmaceutical and consumer packaged goods manufacturer against its distributor in relation to dispute arising out of a Distribution Agreement.
- Successfully represented one of world's second largest oilfield services company against an Indian party in relation to performance and breach of contracts.
- US based fund in relation to dispute against Publishing and Exhibition Company.

## C. Bilateral Investment Treaty

- US real-estate fund in relation to their investment in a SEZ in Southern India involving issues of bribery and corruption and affixing state responsibility.
- A telecom giant in a multi-billion investment arbitration against Government of India.
- Consortium of six global funds in relation to potential claims against Government of India.
- Sovereign wealth fund in potential invocation of a BIT arbitration against the Government of India. The matter was eventually resolved amicably and resulted into one of India's largest M&A transaction.
- Foreign government in resisting enforcement proceedings in respect of one of the world's largest Treaty award.

## D. Challenge and Enforcement Proceedings

- An Indian (FinTech: Banking and Payment Software Solutions Co.) in proceedings before the Mauritius Supreme Court for setting aside a multi-million dollar (23 mil) arbitration award seated in Mauritius.
- Global pharmaceutical company in enforcement of an arbitral award emanating out of one of India's largest M & A transactions.
- Korean conglomerate in enforcement of an award passed in an Austria seated ICC arbitration against an Indian public listed company.
- US based company involved in the gaming industry for enforcement of an AAA arbitral award passed in US against a Mumbai based leading gaming entity.
- A Swiss multi-national commodity trading and mining company against an Indian public company in enforcement of a Singapore-seated SIAC award.
- An engineering company on the enforceability of an ICC arbitration award passed in London against a US company.
- Advising a Japanese entity in enforcement of an award seated in Singapore in relation to India's biggest M & A transaction.

## II. Commercial Litigation

- International bondholders in a dispute against an Indian listed pharmaceutical company with respect to FCCB defaults.
- Prominent French bank in relation to its challenge of the scheme of amalgamation of a large Indian conglomerate.
- Two Indian ATM service providers in proceedings filed by a public sector bank in a dispute pertaining to deployment of ATM machines across India under a scheme propagated by the Ministry of Finance.

- Subsidiary of a European research based company in the pharmaceutical industry in respect of an internal investigation.
- One of Italy's oldest and most prestigious universities in respect of local issues pertaining to their Indian operations.
- Film production-company in its dispute with suppliers before the Bombay High Court.
- In a multi-jurisdictional shareholder dispute in one of the largest private organizations in the world engaged in the identification and grading of precious stones in pre-litigation strategy, foreign investment issues, dispute resolution and negotiation.

### III. Regulatory Litigation

- Competition Law
  - » Leading cement manufacturing company in cartelization investigation before the Competition Commission of India.
  - » Manufacturing company engaged in the defence sector in a cartelization case.
  - » Online aggregator in relation to ticketing services on issues under Competition Law.
- Drugs, Pharmaceuticals and Cosmetics
  - » Challenge to a licence cancellations and suspensions under the Drugs & Cosmetics Act.
  - » Show cause notices before the State FDA and Drug Controller.
  - » Regulatory litigation under Drug Price Control Orders.
- Foreign Exchange Laws
  - » E-commerce entity in relation to proceedings under foreign exchange laws and assisting in preparation of submissions and responses to notices.
- Securities Law
  - » Leading listed manufacturer of electrical goods in relation to regulatory matters before the Securities Appellate Tribunal and the Supreme Court.
  - » Art fund in respect of regulatory issues before SEBI and SAT.
  - » Real estate client before SEBI in investigations done in relation to violation of insider trading regulations.
  - » In one of the biggest insider trading litigation by the US SEC.
  - » US Telecom Company on a Telecom Dispute Settlement and Appellate Tribunal litigation.

- » Director of a leading telecom company in relation to investigation by authorities for non-compliance of FEMA regulations.
- » An IT sector company in relation to investigation and arrest made in relation to non-compliance of custom regulations.

## IV. IP Litigation

- Representing a service provider in relation to offences of unauthorized access of network and data copying under Information Technology Act and parallel civil proceedings.
- Online platform in resisting injunction and blockage of website under the Information Technology Act before Delhi High Court in trademark and copyright infringement case.
- Large online portal in settling trademark and domain names dispute.
- In a cross-border copyright action for rights relating to Tintin books in the Bombay High Court.
- Leading a film production company in a landmark case on remake rights.
- Leading film Distribution Company with respect to disputes relating to films such as Ghajini, Golmaal and Singh is King.
- Leading theater and film director in India with respect to intellectual property disputes.
- In software space with respect to a dispute with its employees relating to ownership of intellectual property in certain patents.
- An emerging Indian IT company against an established competitor with respect to copyright infringement.
- Represented a number of clients in their domain name disputes before bodies such as World Intellectual Property Organization (WIPO) and Nixi (Indian domain name Registry).
- Indian film financier and co-producer in a dispute pertaining to mainstream Hindi feature film against a Bollywood producer.
- Leading international event management-company with respect to infringement of their intellectual property rights and passing off action.
- Assisted several clients in sending cease and desist notices for intellectual property violations and creating strategy for settlement of disputes.
- Assisting several clients in trademark and patent opposition matters before the trademarks and patent offices.

## V. White Collar, Fraud and Investigations

- Advised a Japanese conglomerate in respect of potential disclosure obligations for a listed entity under Indian laws.



- Advising a private equity investor with regard to anti-corruption and bribery compliances and conducting investigation in relation to alleged offences.
- A global leader in clean coal solutions, its entities, directors and employees in relation to proceedings before Economic Offences Wing and Magistrate both got dismissed due to disputes being commercial in nature.
- Director of a leading IT companies in one of the biggest Indian corporate scam in matters relating to corporate frauds, money laundering and export norm violations.
- Private Equity and Investment Advisors in one of the biggest Indian telecommunication scam in matters related to spectrum allocation.
- Leading research house in a case of human resources fraud.
- An Indian subsidiary of a leading international IT services company in a matter pertaining to civil disputes and consequential criminal complaint.
- Private Equity Investor in a cyber-crime cell investigation pertaining to data theft and breach of confidentiality in relation to its investment in the healthcare sector.
- Leading chemical manufacturing company in a corporate defamation case.
- Private Equity investor in a fraud done by promoters and managing director of the investee company and a strategized takeover of investee company.
- Leading media house in a matter relating to criminal breach of trust and cheating by a film director.
- Major US- based Multi-National bank in a case related to identity theft.
- A large IT sector company in a matter relating to fraud by an Indian distributor.
- Leading manufacturing company in relation to theft of designs and other copyrighted material by its employee.
- French fund manager regarding a white collar crime/ economic offence in relation to an Indian investment.
- One of the world leaders in manufacturing and supply of water measuring devices regarding identity theft and fraud.

## VI. Worldwide litigation project management

- Managed litigation of an Indian car manufacturer in Belgium.
- Managed a litigation of an Art fund in the NY, United States and United Kingdom.
- Managed a litigation for a Singapore investment company in Nevada, United States.
- Managed litigation of an Indian film distribution company in Singapore.
- Managed litigation for an Indian manufacturer in California, United States.
- Managed litigation for an Indian logistics company in Hong Kong.

## 4. Representative Clients

- Abbott
- Adventity BPO
- Airbnb
- Altima Partners
- Amazon
- Atos
- Baker Hughes
- Bharti Infratel
- Bocconi University
- Bristol Myers
- BNY Melon
- Capgemini
- Caspian
- Cognizant
- Digital Radio (Red FM)
- DIC
- Dorf Ketal
- Eurokids International
- Everstone Capital Advisors
- Frasers Hospitality Pte. Limited
- Finn fund
- Franklin Templeton
- GE Capital (Asia Pacific)
- General Atlantic
- Go Daddy
- Goldman Sachs
- Halcyon
- Hitachi Payment
- HOOQ
- ICICI Ventures
- Idream Productions
- Infosys
- Integreon
- IndiaVenture Advisors
- Ioffer Inc.
- Jacob's
- Johnson & Johnson
- Krayon Pictures
- Lokhandwala Builders
- Lorentz
- Mphasis
- Music Choice
- Naaptol
- Natixis
- Nicholas Applegate Capital Management
- Nizam of Hyderabad
- Nvidia
- Oman Investment Fund
- Oracle
- Osian's
- Passport Capital
- Peabody
- Peterbeck Partners
- Plaid
- Pragnya Fund
- QPS
- Raheja Universal
- Ram Mynampati (Ex-Director Satyam)
- Roche
- Sanjay Leela Bhansali Films
- Smith Nephew
- Source Code
- Star CJ
- Stolt
- Summit Partners
- Sun Apollo
- Suvidhaa
- St. Jude Medical, Inc.
- Synopsis
- Taib Bank
- Transocean
- Telcordia Technologies
- Toshiba
- Toonz Animation India
- UCB India
- Uniworld Logistics
- V Soft
- Venture East
- Viacom 18
- Wireless Developers Agency
- Zodiuss

## About NDA

Nishith Desai Associates (NDA) is a research based international law firm with offices in Mumbai, Bangalore, Palo Alto (Silicon Valley), Singapore, New Delhi, Munich and New York. We provide strategic legal, regulatory, and tax advice coupled with industry expertise in an integrated manner.

As a firm of specialists, we work with select clients in select verticals on very complex and innovative transactions and disputes.

Our forte includes innovation and strategic advice in futuristic areas of law such as those relating to Bitcoins (block chain), Internet of Things (IOT), Aviation, Artificial Intelligence, Privatization of Outer Space, Drones, Robotics, Virtual Reality, Med-Tech, Ed-Tech and Medical Devices and Nanotechnology.

We specialize in Globalization, International Tax, Fund Formation, Corporate & M&A, Private Equity & Venture Capital, Intellectual Property, International Litigation and Dispute Resolution; Employment and HR, Intellectual Property, International Commercial Law and Private Client. Our industry expertise spans Automobile, Funds, Financial Services, IT and Telecom, Pharma and Healthcare, Media and Entertainment, Real Estate, Infrastructure and Education. Our key clientele comprise marquee Fortune 500 corporations.

According to the recent 'AUTOMOTIVE MISSION PLAN: 2016-26' released by the Government of India (GoI) and Society of Indian Automobile Manufacturers (SIAM), several key initiatives by the Government and the major automobile players in the domestic market will allow the Indian automobile industry to be amongst the top three in the world and will touch the \$300 billion mark in revenues by the year 2026.

We at NDA accordingly prepare ahead, envisaging the coming 10 to 15 years, in order to provide clients appropriate insights based on our understanding of current as well as future legal and regulatory issues.

Our ability to innovate is endorsed through the numerous accolades gained over the years and we are also commended by industry peers for our inventive excellence that inspires others.

Most recently, NDA was ranked the 'Most Innovative Asia Pacific Law Firm in 2016' by the *Financial Times - RSG Consulting Group* in its prestigious **FT Innovative Lawyers Asia-Pacific 2016** Awards. While this recognition marks NDA's ingress as an innovator among the globe's best law firms, NDA has previously won the award for the 'Most Innovative Indian Law Firm' for two consecutive years in 2014 and 2015.

As a research-centric firm, we strongly believe in constant knowledge expansion enabled through our dynamic Knowledge Management ('KM') and Continuing Education ('CE') programs. Our constant output through Webinars, Nishith.TV and 'Hotlines' also serves as effective platforms for cross pollination of ideas and latest trends.

Our trust-based, non-hierarchical, democratically managed organization that leverages research and knowledge to deliver premium services, high value, and a unique employer proposition has been developed into a global case study and published by John Wiley & Sons, USA in a feature titled 'Management by Trust in a Democratic Enterprise: A Law Firm Shapes Organizational Behavior to Create Competitive Advantage' in the September 2009 issue of *Global Business and Organizational Excellence (GBOE)*.

A brief below chronicles our firm's global acclaim for its achievements and prowess through the years.

- **IDEX Legal Awards:** In 2015, NDA won the “M&A Deal of the year”, “Best Dispute Management lawyer”, “Best Use of Innovation and Technology in a law firm” and “Best Dispute Management Firm”. Nishith Desai was also recognized as the ‘Managing Partner of the Year’ in 2014.
- **Merger Market:** has recognized NDA as the fastest growing M&A law firm in India for the year 2015.
- **Legal 500** has ranked us in tier 1 for Investment Funds, Tax and Technology-Media-Telecom (TMT) practices (2011, 2012, 2013, 2014)
- **International Financial Law Review** (a Euromoney publication) in its **IFLR1000** has placed Nishith Desai Associates in Tier 1 for Private Equity (2014). For three consecutive years, IFLR recognized us as the Indian “Firm of the Year” (2010-2013) for our Technology - Media - Telecom (TMT) practice.
- **Chambers and Partners** has ranked us # 1 for Tax and Technology-Media-Telecom (2015 & 2014); #1 in Employment Law (2015); # 1 in Tax, TMT and Private Equity (2013); and # 1 for Tax, TMT and Real Estate – FDI (2011).
- **India Business Law Journal (IBLJ)** has awarded Nishith Desai Associates for Private Equity, Structured Finance & Securitization, TMT, and Taxation in 2015 & 2014; for Employment Law in 2015
- **Legal Era** recognized Nishith Desai Associates as the Best Tax Law Firm of the Year (2013).

Please see the last page of this paper for the most recent research papers by our experts.



















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The following research papers and much more are available on our Knowledge Site: [www.nishithdesai.com](http://www.nishithdesai.com)

	<b>Fund Structuring and Operations</b>		<b>Social Impact Investing in India</b>		<b>The Curious Case of the Indian Gaming Laws</b>
	July 2016		May 2017		January 2017
	<b>Corporate Social Responsibility &amp; Social Business Models in India</b>		<b>Incorporation of Company/LLP in India</b>		<b>Outbound Acquisitions by India-Inc</b>
	May 2017		April 2017		September 2014
	<b>Internet of Things</b>		<b>Doing Business in India</b>		<b>Private Equity and Private Debt Investments in India</b>
	January 2017		July 2016		June 2015

## NDA Insights

TITLE	TYPE	DATE
Blackstone's Boldest Bet in India	M&A Lab	January 2017
Foreign Investment Into Indian Special Situation Assets	M&A Lab	November 2016
Recent Learnings from Deal Making in India	M&A Lab	June 2016
ING Vysya - Kotak Bank : Rising M&As in Banking Sector	M&A Lab	January 2016
Cairn – Vedanta : 'Fair' or Socializing Vedanta's Debt?	M&A Lab	January 2016
Reliance – Pipavav : Anil Ambani scoops Pipavav Defence	M&A Lab	January 2016
Sun Pharma – Ranbaxy: A Panacea for Ranbaxy's ills?	M&A Lab	January 2015
Reliance – Network18: Reliance tunes into Network18!	M&A Lab	January 2015
Thomas Cook – Sterling Holiday: Let's Holiday Together!	M&A Lab	January 2015
Jet Etihad Jet Gets a Co-Pilot	M&A Lab	May 2014
Apollo's Bumpy Ride in Pursuit of Cooper	M&A Lab	May 2014
Diageo-USL- 'King of Good Times; Hands over Crown Jewel to Diageo	M&A Lab	May 2014
Copyright Amendment Bill 2012 receives Indian Parliament's assent	IP Lab	September 2013
Public M&A's in India: Takeover Code Dissected	M&A Lab	August 2013
File Foreign Application Prosecution History With Indian Patent Office	IP Lab	April 2013
Warburg - Future Capital - Deal Dissected	M&A Lab	January 2013
Real Financing - Onshore and Offshore Debt Funding Realty in India	Realty Check	May 2012

## 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.

Research has offered us the way to create thought leadership in various areas of law and public policy. Through research, we discover new thinking, approaches, skills, reflections on jurisprudence, and ultimately deliver superior value to our clients.

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 Insights* 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. Although we invest heavily in terms of associates' 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.

Our research has also contributed to public policy discourse, helped state and central governments in drafting statutes, and provided regulators with a much needed comparative base for rule making. 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 are now in the second phase of establishing a 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. The center will become the hub for research activities involving our own associates as well as legal and tax researchers from world over. It will also provide the platform 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 reports.

Please feel free to contact us at  
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