MISTAKES TO AVOID WHILE INVESTING IN INDIA

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MISTAKES TO AVOID

- Not stamping contracts
- Not assessing the impact of exchange management laws
  - Sector restrictions
  - Ownership restrictions
  - Special sectoral conditions (*retail trading; market place vs. inventory based; financial services*)
  - Minimum price for investment and maximum price for exit
  - Downstream investments by entities not owned and controlled by Indian citizens and residents

MISTAKES TO AVOID

- Using the wrong instruments for investments
  - Preference shares
  - Optionally convertible instruments
- Not knowing that a convertible note cannot be issued by all entities
- Not knowing that convertible notes must be converted into equity shares only
- Not knowing that there cannot be an assured return on a put option

MISTAKES TO AVOID

- Not mitigating risks related to non-enforcement of liquidation preference rights
- Not knowing that voting on an '*as if converted basis*' may not be available in all cases
- Not knowing that shares cannot be issued at a discount except in certain conditions

MISTAKES TO AVOID

- Not incorporating terms of a joint venture in the articles of association
- Imposing restrictions on transfer of shares of a public company
- Imposing non-compete obligations beyond the term of a contract
- Not providing for a deadlock resolution provision
- Not providing for a future capital requirement provision
- Not providing for an exit provision

MISTAKES TO AVOID

- Not providing appropriate IP assignment clauses
- Not providing for arbitration of disputes
- Not excluding or in some cases excluding section 9 of the Arbitration Act of India
- Not providing or providing liquidated damages in contracts
- Not assessing implications of the public policy of India

Thank you!

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