

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p style="text-align: center;"><b>INTRODUCTION</b></p> <p><b>Purpose and currency of checklist.</b> This checklist is designed to be used with the CLIENT IDENTIFICATION, VERIFICATION, AND SOURCE OF MONEY (A-1), CLIENT FILE OPENING AND CLOSING (A-2), and SHARE PURCHASE AGREEMENT DRAFTING (B-4) checklists. It is primarily intended for use by the purchaser’s lawyer, but may also serve as a guide for the vendor’s lawyer. The checklist is also primarily intended for use in the acquisition of shares in a British Columbia company that is not a reporting company. This checklist is current to September 1, 2023.</p> <p><b>New developments:</b></p> <ul style="list-style-type: none"> <li>• <b>Enhanced scrutiny under the <i>Investment Canada Act, R.S.C. 1985, c. 28 (1st Supp.)</i>.</b> On April 18, 2020, in response to COVID-19, the Minister of Innovation, Science and Industry (the “Minister”) announced a new policy under which the Government of Canada will subject certain foreign investments to additional scrutiny. The policy targets foreign investments in Canadian businesses that are related to public health or involved in the supply of critical goods and services. On October 28, 2022, the Minister announced strategic policy surrounding foreign direct investment in Canadian Critical Mineral sectors in response to the Critical Minerals List announced on March 11, 2021. Under the <i>Investment Canada Act</i>, the Minister must approve proposed acquisitions of control from foreign investors, including state-owned entities, where the value of the Canadian business is above the defined threshold. An application by a foreign state-owned entity will only be approved on an exceptional basis. Furthermore, effective August 2, 2022, a new filing option gives non-Canadian investors the ability to obtain pre-implementation regulatory certainty with respect to a national security review of investments that do not require a filing under the Act. See the <a href="#">full policy statement and voluntary filing information</a>.</li> <li>• <b>Electronic meetings.</b> On May 20, 2021, the majority of the provisions of the <i>Finance Statutes Amendment Act (No. 2), 2021, S.B.C. 2021, c. 14</i> came into effect by royal assent. The Act amends the <i>Business Corporations Act, S.B.C. 2002, c. 57</i> (the “BCA”), as well as the <i>Cooperative Association Act, S.B.C. 1999, c. 28</i>; <i>Financial Institutions Act, R.S.B.C. 1996, c. 141</i>; and <i>Societies Act, S.B.C. 2015, c. 18</i> to expressly permit virtual AGMs and board meetings. The legislation now provides that, unless the memorandum or articles provide otherwise, a company may hold its AGM by telephone or other communications medium if all shareholders and proxy holders attending the meeting are “able to participate in it”. This replaces the previous requirement that shareholders and proxy holders be “able to communicate with each other”. The rules further provide that if a company holds a meeting of shareholders that is an electronic meeting, the company must “permit and facilitate participation in the meeting”. Companies should consider whether they may want to require in-person meetings (which will now require an explicit restriction on holding an AGM by telephone or other communications medium in the company’s articles).</li> <li>• <b>Arbitration Act.</b> The <i>Arbitration Act, S.B.C. 2020, c. 2</i>, came into force on September 1, 2020. It is strongly recommended that practitioners review the new legislation prior to drafting or revising arbitration clauses in agreements.</li> <li>• <b>Land Owner Transparency Act.</b> The <i>Land Owner Transparency Act, S.B.C. 2019, c. 23</i> (the “LOTA”) came into force on November 30, 2020 (except for certain specified provisions that came into force on April 30, 2021) The <i>LOTA</i> includes the Land Owner Transparency Regulation, B.C. Reg. 250/2020, also made effective November 30, 2020. The <i>LOTA</i> requires a transparency declaration, or report (if applicable), to be filed in the new Land Owner Transparency</li> </ul>					

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<p>Registry (the “LOTR”) any time an application is made to register or transfer an interest in land under the <i>Land Title Act</i>, R.S.B.C. 1996, c. 250. The LOTR will be administered by the Land Title and Survey Authority of British Columbia. A reporting body under the <i>LOTA</i>—which includes most corporations, trusts, and partnerships, subject to limited exemptions—will have to file a transparency report any time there is a change in interest holders or beneficial owners, even if legal title is not transferred. For further information, see the Land Owner Transparency Registry website and also the course presentation and materials by S. Carter, R. Danakody, and C.R. MacDonald, “Land Title and Survey Authority of British Columbia: Land Owner Transparency Registry”, in <i>Residential Real Estate Conference 2020</i> (CLEBC, 2020), and by R. Danakody and T. Norman, “Land Owner Transparency Registry (LOTR)” in <i>Real Estate Development Update 2021</i> (CLEBC, 2021), available through CLEBC Courses on Demand.</p> <ul style="list-style-type: none"> <li> <p><b>Transparency register.</b> The operative provisions of the <i>Business Corporations Amendment Act, 2019</i>, S.B.C. 2019, c. 15 came into force on October 1, 2020 (B.C. Reg. 77/2020). The Act requires private companies incorporated under the <i>BCA</i> to create and maintain a “transparency register” of information about “significant individuals”. Individuals will be considered “significant individuals” if: they directly or indirectly own, or indirectly control 25% or more of the issued shares of the company, or shares that carry 25% or more of the voting rights of the company; or they are able to exercise rights or influence, directly or indirectly, that would result in the election, appointment or removal of the majority of the company’s directors. If two or more individuals meet the above criteria by jointly holding the prescribed interest or right, then each will be deemed a “significant individual”. Similarly, two or more individuals who are acting in concert, or who meet the definition of “associate” in s. 192(1) of the <i>BCA</i>, must add their interests together. If the group meets the above criteria, the company must list every member of the group as significant individuals in its transparency register. The transparency register must contain the following information for each significant individual: full name, date of birth, and last known address; whether the individual is a Canadian citizen or permanent resident of Canada and, if not, a list of every country of which the individual is a citizen; whether the individual is a resident of Canada for tax purposes; the date on which the individual became or ceased to be a significant individual; a description of how the individual meets the definition of a significant individual; and any further information that may be required by regulation. Access more information at <a href="http://www2.gov.bc.ca/gov/content/employment-business/business/bc-companies/transparency-register">www2.gov.bc.ca/gov/content/employment-business/business/bc-companies/transparency-register</a>.</p> </li> <li> <p><b>Exemptions on additional property transfer tax on foreign entities.</b> The Property Transfer Tax Regulation, B.C. Reg. 74/88, provides for relief, in certain circumstances, from the additional 20% property transfer tax on transfers of residential property in the Metro Vancouver Regional District, Capital Regional District, Regional District of Central Okanagan, Fraser Valley Regional District, and Regional District of Nanaimo to “foreign entities”. Effective June 1, 2020, see s. 22 for the “Exemption for general partner or bare trustee of limited partnership”. See also ss. 17.1 to 20 for the exemption for a foreign national who has confirmation as a worker under the Provincial Nominee Program and s. 21 regarding the refund of the extra tax paid by a transferee who became a Canadian citizen or permanent resident within one year of the registration date.</p> </li> </ul>					

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<ul style="list-style-type: none"> <li>• <b>Purpose-built rental exemption.</b> Effective January 1, 2024, certain new purpose-built rental buildings will be exempt from the further 2% property tax applied to residential property values that exceed \$3,000,000 and meet the eligibility requirements. Updates to the tax exemption and eligibility requirements can be found at <a href="http://www2.gov.bc.ca/gov/content/taxes/property-taxes/property-transfer-tax/exemptions#:~:text=Purpose%2Dbuilt%20rental%20exemption,property%20value%20that%20exceeds%20%243%2C000%2C000.">www2.gov.bc.ca/gov/content/taxes/property-taxes/property-transfer-tax/exemptions#:~:text=Purpose%2Dbuilt%20rental%20exemption,property%20value%20that%20exceeds%20%243%2C000%2C000.</a></li> <li>• <b>Business Corporations Act.</b> Amendments to the <i>BCA</i> between October 28, 2021 and July 7, 2023 incorporate language changes to reflect greater inclusivity. Section 124(2)(b.1) addresses a person’s qualification to become a director if a certificate of incapability had been issued under the <i>Adult Guardianship Act</i>, R.S.B.C. 1996, c. 6 (providing they are not qualified unless such certificate is cancelled). Otherwise, no substantive amendments were made.</li> <li>• <b>Benefit companies.</b> The legislation governing benefit companies came into force on June 30, 2020 with changes to the <i>BCA</i>. A benefit company is a for-profit company that conducts business in a sustainable and responsible manner, while promoting one or more public benefits. For more information on benefit companies, see “Incorporating a Benefit Company” at <a href="http://www2.gov.bc.ca/assets/gov/employment-business-and-economic-development/business-management/permits-licences-and-registration/registries-packages/information-package-for-benefit-company.pdf">www2.gov.bc.ca/assets/gov/employment-business-and-economic-development/business-management/permits-licences-and-registration/registries-packages/information-package-for-benefit-company.pdf</a> (PDF) and Part 2.3 of the <i>BCA</i>.</li> <li>• <b>Canada Business Corporations Act.</b> Amendments to the <i>Canada Business Corporations Act</i>, R.S.C. 1985, c. C-44 (“<i>CBCA</i>”) took effect August 31, 2022 and require distributing corporations (generally only public companies which are governed under the <i>CBCA</i>) to comply with new requirements with respect to the election of directors. Note the amendments in s. 106 of the <i>CBCA</i> with respect to “majority voting” and “individual election” requirements. If a <i>CBCA</i> company is being incorporated, and particularly if it may become a reporting issuer, particular attention should be given to the company’s articles with respect to electing and appointing its directors. On June 23, 2022 <i>CBCA</i> amendments received Royal Assent, requiring private <i>CBCA</i> corporations report beneficial ownership information to Corporations Canada on a regular basis. Bill C-42 now presents a second series of amendments to the <i>CBCA</i>, proposing further corporate transparency and accountability by making certain information public within the individuals with significant control (“ISC”) register. Under the proposed amendments, the name, residential address, date of birth, and citizenship of each ISC would require inclusion in the register.</li> <li>• <b>MRAS.</b> The Multi-Jurisdictional Registry Access Service (the “MRAS”) was introduced on June 29, 2020. The MRAS allows for the sharing of information under the New West Partnership Trade Agreement (the “NWPTA”). Extraprovincial registration (or cancellation thereof) under the NWPTA is no longer made through the home jurisdiction; it must now be made through each extraprovincial jurisdiction. For instance, prior to June 29, 2020, when a British Columbia company wanted to be extraprovincially registered in Alberta, the filing was made through BC Online. Now the extraprovincial filing must be made through the Alberta Corporate Registry.</li> <li>• <b>Manitoba joins NWPTA.</b> Pursuant to the <i>Trade, Investment and Labour Mobility Agreement Implementation Act</i>, S.B.C. 2008, c. 39 (the “<i>TILMA Act</i>”), the Extraprovincial Companies and Foreign Entities from a Designated Province Regulation, B.C. Reg. 88/2009, and by operation of the NWPTA, an enterprise</li> </ul>					

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<p>meeting the requirements of any of the provinces of British Columbia, Alberta, Saskatchewan, and Manitoba are deemed to meet the requirements of the other participating provinces. This eliminates the requirement by British Columbia companies extraprovincially registered in those provinces to make separate filings there for annual returns or changes of directors (it does not eliminate the need for extraprovincial registration). For information about corporate registry procedures pursuant to the NWPTA, visit the NWPTA page on the Corporate Registry website at <a href="http://www.bcregistryservices.gov.bc.ca">www.bcregistryservices.gov.bc.ca</a>.</p> <ul style="list-style-type: none"> <li>• <b>Competition Act.</b> Amendments to the <i>Competition Act</i>, R.S.C. 1985, c. C-34, effective June 23, 2023, include provisions prohibiting agreements for mutual conduct to not hire or solicit each other’s employees.</li> </ul> <p><b>Of note:</b></p> <ul style="list-style-type: none"> <li>• <b>Aboriginal law.</b> Special considerations apply to businesses involving Indigenous persons and lands belonging to First Nations. While significant tax and other advantages may be available under the <i>Indian Act</i>, R.S.C. 1985, c. I-5, such advantages are affected by the following: the type of business; transaction nature; business entity (sole proprietorship, partnership, joint venture, trust, or incorporated company); location of business activity (either on or off First Nations lands); and the specific First Nation and its applicable governance. Effective May 11, 2023, the <i>Budget Measures Implementation Act, 2023</i> came into force, amending the <i>Treaty First Nation Taxation Act</i>, S.B.C 2007, c. 38, and the <i>Nisga’a Final Agreement Act</i>, S.B.C. 1999, c. 2. These legislative amendments allow taxing treaty First Nations and the Nisga’a nation, respectively, to implement tax exemptions for property on their lands. If the transaction involves First Nations land, consider seeking the advice of a lawyer who has experience in Aboriginal law matters. Further information on Aboriginal law issues is available on the “Aboriginal Law” page on the “Practice Areas” section of the Continuing Legal Education Society of British Columbia website (<a href="http://www.cle.bc.ca">www.cle.bc.ca</a>) and in other CLEBC publications. See also <i>Negotiating &amp; Structuring Business Transactions with First Nations 2011</i> (CLEBC, 2011).</li> <li>• <b>Money laundering—companies, trusts and other entities.</b> The prevalence of money laundering in British Columbia (particularly in the area of real estate) continues to be a concern. The provincial government established the Commission of Inquiry into Money Laundering in British Columbia, which was led by Austin Cullen J. as the commissioner. The Cullen Commission’s final report was publicly released on June 15, 2022. For more information on the Cullen Commission, and the link to the full report, see LAW SOCIETY NOTABLE UPDATES LIST (A-3). In addition, consult the Law Society’s resources related to anti-money laundering including guidance for the profession: <a href="http://www.lawsociety.bc.ca/priorities/anti-money-laundering/">www.lawsociety.bc.ca/priorities/anti-money-laundering/</a>.</li> </ul> <p>As a means of laundering money, criminals use ordinary legal instruments (such as shell and numbered companies, bare trusts, and nominees) in the attempt to disguise the true owners of real property, the beneficial owners. These efforts can be hard to detect. As such, lawyers must assess the facts and context of the proposed retainer and financial transactions. Lawyers should be aware of red flags and if a lawyer has doubts or suspicions about whether they could be assisting in any dishonesty, crime or fraud, they should make enough inquiries to determine whether it is appropriate to act (<i>BC Code</i> rules 3.2-7 and 3.2-8 and Law Society Rules 3-103(4), 3-109, and 3-110). See the resources on the Law Society’s Client ID &amp; Verification resources webpage such as the Source of</p>					

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<p>Money FAQs, Risk Assessment Case Studies for the Legal Profession in the context of real estate, trusts, and companies, and the Red Flags Quick Reference Guide. Also see the Risk Advisories for the Legal Profession regarding real estate, shell corporations, private lending, trusts, and litigation; “Forming Companies and Other Structures—Managing the Risk (<a href="#">Bencher’s Bulletin, Spring 2021</a>); and the <a href="#">Discipline Advisories</a> including country/geographic risk and private lending. Lawyers may contact a Law Society practice advisor at <a href="mailto:practiceadvice@lsbc.org">practiceadvice@lsbc.org</a> for a consultation about the applicable <i>BC Code</i> rules and Law Society Rules and obtain guidance. The Federation of Law Societies of Canada recently launched an online learning program “<a href="#">Anti-Money Laundering and Terrorist Financing in the Canadian Legal Profession</a>”.</p> <ul style="list-style-type: none"> <li>• <b>COVID-19 pandemic.</b> Counsel should keep apprised of developments related to COVID-19 (and response measures) that may affect transactions. Note that: <ul style="list-style-type: none"> <li>○ The Land Title Survey Authority will retire temporary COVID-19 practice changes under the <i>Land Title Act</i>, R.S.B.C. 1996, c. 250, on September 30, 2023. which include remote witnessing of affidavits for use in land title applications. Further information may be accessed at <a href="https://ltsa.ca/covid-19-resources/">https://ltsa.ca/covid-19-resources/</a>.</li> <li>○ Counsel conducting due diligence searches must be mindful of the impact of the COVID-19 pandemic on the due diligence process. Response times for search requests may be delayed and, accordingly, such delays should be accounted for in the due diligence timeline. Counsel should be aware that search results may not disclose certain actions, fines, levies, or administrative penalties that have been delayed but are otherwise permitted to be filed or issued beyond the typical limitation period.</li> </ul> </li> <li>• <b>Additional resources.</b> For further information about asset purchases, see <i>Advising British Columbia Businesses</i> (CLEBC, 2006–); <i>Buying and Selling a Business: Annotated Precedents</i> (CLEBC, 2000–); <i>British Columbia Personal Property Security Act Practice Manual</i> (CLEBC, 1995–); and the <i>Due Diligence Deskbook</i> (CLEBC, 1994–).</li> <li>• <b>Law Society of British Columbia.</b> For changes to the Law Society Rules and other Law Society updates and issues “of note”, see LAW SOCIETY NOTABLE UPDATES LIST (A-3). Note in particular the commentary on fraud prevention, bank holds on trust funds, and all other matters that may be relevant to purchase and sale transactions.</li> </ul> <p style="text-align: center;"><b>CONTENTS</b></p> <ol style="list-style-type: none"> <li>1. Initial Contact</li> <li>2. Initial Interview</li> <li>3. After the Initial Interview</li> <li>4. Drafting the Agreement</li> <li>5. Prior to Closing</li> <li>6. Closing</li> <li>7. Post-Closing</li> </ol> <p style="text-align: center;"><b>CHECKLIST</b></p> <ol style="list-style-type: none"> <li>1. <b>INITIAL CONTACT</b> <ol style="list-style-type: none"> <li>1.1 Arrange the initial interview.</li> </ol> </li> </ol>					

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<p>1.2 Ask the client to bring to the initial interview all available financial and operational information on the target company and the vendor(s), particularly financial statements, ownership information, annual reports, prospectuses, press releases, list of assets, contracts, leases, government permits, etc. (as may be applicable). Consider requesting client information if the target is to be combined with or complementary to an existing investment of the client. Where information is not available, consider how it will be obtained.</p> <p>1.3 Conduct a conflicts of interest check. Refer to the CLIENT FILE OPENING AND CLOSING (A-2) checklist.</p> <p>1.4 Confirm compliance with Law Society Rules 3-98 to 3-110 for client identification and verification and the source of money for financial transactions, and complete the CLIENT IDENTIFICATION, VERIFICATION, AND SOURCE OF MONEY (A-1) checklist. Consider periodic monitoring requirements (Rule 3-110).</p> <p>1.5 Inquire as to whether the client has discussed the prospective transaction with their accounting advisor and consider obtaining such advisor’s contact particulars in order to obtain their input on the transaction.</p>					
<p><b>2. INITIAL INTERVIEW</b></p>					
<p>2.1 Discuss the terms of your retainer and the calculation of your fee. Refer to the CLIENT FILE OPENING AND CLOSING (A-2) checklist. Clarify your role in the transaction and that of other advisors to the client. Make it clear for whom you are working (in particular, if there is more than one purchaser or principal of the purchaser). If acting for more than one party, ensure that you comply with the <i>Code of Professional Conduct for British Columbia</i> (the “BC Code”) rules 3.4-5 to 3.4-9 regarding joint retainers, and refer to item 2.4 in the CLIENT FILE OPENING AND CLOSING (A-2) checklist. Urge others, in writing, to get independent legal representation. Make it clear that you are not protecting their interests and that you are acting exclusively in the interests of your client (<i>BC Code</i>, rule 7.2-9).</p> <p>2.2 Determine whether the client has already reached an agreement in principle with the vendor concerning the general terms of the transaction. If not:</p> <p>.1 Advise the client regarding the possibility of structuring the transaction as an asset purchase (if appropriate in the circumstances). Consider the tax consequences of purchasing shares versus purchasing assets and consider discussing same with the client’s accountant.</p> <p>.2 Consider signing a confidentiality agreement to allow negotiations to commence. If the client and vendor are competitors, consider safeguards in sharing competitively sensitive information. Sharing competitively sensitive information can be problematic, particularly if the transaction fails to close. Consider the implications of the <i>Competition Act</i>, including the recent amendments referenced at “New developments” above.</p> <p>2.3 Determine the client’s objectives and why the client wants to complete this transaction. Will it be integrated into an existing business? Assess any impact on the client’s existing business, if relevant. Seek to determine specific risks and regulatory requirements that may be of concern to the purchaser.</p> <p>2.4 Consider the name under which the business will be conducted post-closing, to determine due diligence regarding trademarks and other intellectual property.</p>					



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<p>2.5 Review the financial statements and other information with the client, the client’s accountant, and tax advisor (assuming you are not providing tax advice).</p> <p>2.6 Determine the principal elements of the transaction: who is buying what from whom, and for how much? How does the client intend to finance the transaction? Are there any conditions to be met before the deal can proceed (e.g., regulatory approvals)? Are there any third-party consents that need to be obtained (e.g., landlord consents)? Are there any unusual restrictions, covenants, or conditions that are important to the client? Does the business being conducted by the company involve any particular risks (e.g., environmental), and how are these risks to be allocated between the purchaser and the vendor? Are there any special or unusual procedures that need to be followed (e.g., consultation with Indigenous groups)? Consider the use of any restrictive covenant against the vendor and the target, and its enforceability.</p> <p>2.7 If you are not in a position to act, advise the client. Make a record of the advice given, and file your notes. Send a non-engagement letter (for samples, see the Law Society website at <a href="http://www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/Ltrs-NonEngagement.pdf">www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/Ltrs-NonEngagement.pdf</a> (PDF)).</p>					
<p><b>3. AFTER THE INITIAL INTERVIEW</b></p>					
<p>3.1 Confirm your retainer. Refer to the CLIENT FILE OPENING AND CLOSING (A-2) checklist. Confirm compliance with Law Society Rules 3-98 to 3-110 on client identification and verification (see item 1.4 in this checklist).</p> <p>3.2 If the client is a company, verify who has the authority to give instructions (<i>BC Code</i>, rule 3.2-3 Commentary [1]). Consider getting a directors’ resolution confirming your retainer and giving one director or officer the authority to instruct you.</p> <p>3.3 If the client has not reached a tentative agreement with the vendor, draft a letter of intent outlining the transaction in clear terms. Consider whether the client wishes the letter of intent (or any parts of it) to be binding. Review the letter with the client to ensure that it reflects their intentions. Forward the letter to the vendor. Negotiate, if so instructed.</p> <p>3.4 Engage with the client’s lender or their legal counsel (if applicable) regarding financing arrangements, if any, if so instructed.</p> <p>3.5 Initiate the necessary searches to complete the due diligence for the transaction, and where necessary, obtain written authorization from the vendor and the target company for release of the information. Consider which, if any, of these searches should be conducted in relation to the vendor (e.g., to confirm its right, and any limitations on its ability, to sell to your client) or the target, or both. In some instances, searches of both the vendor and the target will be appropriate. Consider the fact that, in a share purchase, the purchaser will inherit all of the obligations and liabilities of the target.</p> <p>.1 Corporate Registry (or equivalent office in jurisdiction of incorporation). Search for memorandum (where still applicable), notice of articles, articles, and any amendments; registered and records offices; annual reports; directors and officers; whether the company has been struck off and subsequently restored; copies of encumbrances which may still bind the company; order certificate of good standing; check that there is no notice of dissent pursuant to s. 301 of the <i>Business Corporations Act</i>, S.B.C. 2002, c. 57.</p>					

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<p>.2 Records office search and minute book review. Examine all registers and determine any deficiencies with respect to directors, members, transfers and allotments of shares, mortgages, debentures and debenture holders, and other indebtedness. Examine share registers, transparency registers, share certificates, waivers of pre-emptive rights, and resolutions authorizing issuance, transfer, and buy-back of shares to determine whether the shares are validly allotted, issued, fully paid, transferred, and redeemed. Examine cancelled share certificates. Determine whether directors' and shareholders' meetings have been properly constituted and whether the directors have been validly appointed. Determine whether the proper authorization for every transaction and material contract has been obtained. Review for appropriate disclosures of interest. Determine whether the minutes disclose any further contracts or commitments (including, in particular, any outstanding shareholders' agreements or options to acquire shares).</p> <p>Review articles to determine whether restrictions on transfer of shares exist and the procedure for executing documents. Determine whether a shareholders' agreement exists and whether it contains restrictions on the transfer of shares.</p> <p>.3 Personal Property Registry.</p> <p>.4 ICBC Vehicle Records Department.</p> <p>.5 Land Title Office. Search for judgments; title; copies of charges and permitted encumbrances; copies of leases and restrictive covenants; other relevant information.</p> <p>(a) Consider searching Land Owner Transparency Registry (see "<i>Land Owner Transparency Act</i>" and "Transparency register" under "New developments" in this checklist).</p> <p>.6 Office of the Superintendent of Bankruptcy (Innovation, Science and Economic Development Canada).</p> <p>.7 Canadian Securities Registration Systems. Search for security under the <i>Bank Act</i>, S.C. 1991, c. 46, s. 427.</p> <p>.8 Labour Relations Board. Search for pending certifications, collective agreements, or any disputes before the Board involving the target company.</p> <p>.9 Other searches as required, depending on the nature of the business of the company (e.g., Mineral Titles Online, Canadian Register of Vessels (Commercial and Pleasure Craft), Small Vessel Register (Commercial), Ministry of Forests, Lands, Natural Resource Operations and Rural Development, hotel/motel tax).</p> <p>.10 Municipal offices. Search for taxes and utilities; planning department; licences and permits; fire inspector; health inspector; zoning and restrictive bylaws.</p> <p>.11 Court registry search re: actions commenced against the target company and vendor in each area where the target company (and, in some instances, the vendor) has substantial business dealings.</p> <p>.12 Sheriff's offices for writs of execution.</p> <p>.13 B.C. Ministry of Finance: PST and employer health tax.</p> <p>.14 Corporation capital tax.</p>					



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<p>.15 Mining tax.</p> <p>.16 Logging tax.</p> <p>.17 Motor fuel tax.</p> <p>.18 Insurance premium tax.</p> <p>.19 Canada Revenue Agency:</p> <p style="padding-left: 20px;">(a) Income tax re: source deductions and corporate or personal income tax.</p> <p style="padding-left: 20px;">(b) GST/HST.</p> <p>.20 Consider credit searches and other search services for background on the target, the vendor, and the principals, as applicable.</p> <p>.21 Insurance carried by the target company.</p> <p>.22 WorkSafeBC: Assessment Division and Prevention Division.</p> <p>.23 Employment Standards Branch.</p> <p>.24 Human Rights Tribunal.</p> <p>.25 Environmental matters. Search environment ministries (federal and provincial), Fisheries and Oceans Canada, Contaminated Site Registry. Consider having an environmental audit conducted.</p> <p>.26 Securities searches for public company vendor, target company, or both, including through SEDAR.</p> <p>.27 Canadian Intellectual Property Office. Search for patents, trademarks, copyrights, etc.</p> <p>.28 Consider searching the Canadian Internet Registration Authority (<a href="http://www.cira.ca">www.cira.ca</a>); perform domain name due diligence.</p> <p>.29 Review <i>Due Diligence Deskbook</i> (CLEBC, 1994–) for other relevant searches and the appropriate scope of the searches.</p> <p>3.6 Review all material contracts, including leases and licences, and permits to be assigned, to determine whether any consents to the purchase are required.</p> <p>3.7 Consider environmental risks associated with property of the company. Assess the need for a Ministry of Environment and Climate Change Strategy, Environment Canada, or Fisheries and Oceans Canada search (see item 3.5.25 in this checklist), a search of other applicable environmental authorities (e.g., municipal, provincial, and federal), or an environmental compliance review. Consider having an environmental audit conducted on property owned by the company. Consider the impact of contaminated sites legislation.</p> <p>3.8 Consider reviewing GST/HST/PST returns filed. Further information can be found at <a href="http://www.cra-arc.gc.ca">www.cra-arc.gc.ca</a> and <a href="http://www2.gov.bc.ca">www2.gov.bc.ca</a>.</p> <p>3.9 Consider consulting a tax expert (in discussion with the client’s accountant).</p> <p>3.10 Consider the impacts on the transaction of the <i>Family Law Act</i>, S.B.C. 2011, c. 25 (or if applicable, the former legislation, <i>Family Relations Act</i>, R.S.B.C. 1996, c. 128); <i>Investment Canada Act</i>, R.S.C. 1985, c. 28 (1st Supp.); <i>Competition Act</i>; and other relevant legislation.</p> <p>3.11 Consider target company’s employees and contractors, and review available employment agreements.</p>					

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<p>3.12 Open a document file and retain successive drafts of the agreement. Open a separate sub-file for each major document required in the transaction.</p>					
<p><b>4. DRAFTING THE AGREEMENT</b></p> <p>4.1 Before drafting the agreement, prepare a timetable and a draft of the closing agenda that will act as a reminder of what is required in the transaction and when. See <i>Buying and Selling a Business: Annotated Precedents</i> (CLEBC, 2000–), for a sample closing agenda for a share purchase transaction.</p> <p>4.2 Prepare an outline of the document considering the terms of the letter of intent. The SHARE PURCHASE AGREEMENT DRAFTING (B-4) checklist may serve as a basis for the document.</p> <p>4.3 Prepare the first draft.</p> <p>4.4 Review the first draft for coherence and continuity. Review the first draft with the client to ensure that it expresses the client’s intentions. Consider also drafting any ancillary agreements to the draft purchase agreement.</p> <p>4.5 When you and the client are satisfied with the agreement, send it to the vendor or their lawyer for comment and changes.</p> <p>4.6 Note changes to the agreement made during the course of negotiation in some readily discernible manner.</p> <p>4.7 Do not alter the document without indicating the changes to the vendor’s lawyer.</p> <p>4.8 When negotiations conclude, prepare the final agreement and check to ensure that the document incorporates the transaction as it has been formulated.</p> <p>4.9 Arrange for signing of the agreement.</p>					
<p><b>5. PRIOR TO CLOSING</b></p> <p>5.1 Prepare or obtain all the necessary documentation (consult the SHARE PURCHASE AGREEMENT DRAFTING (B-4) checklist for additional considerations), including:</p> <p>.1 Notices, applications for review, or rulings pursuant to the <i>Investment Canada Act</i>, the <i>Competition Act</i>, and any other relevant legislation. Consider applying for an advance ruling certificate under the <i>Competition Act</i>.</p> <p>.2 A directors’ resolution of the target company authorizing the transfer of shares.</p> <p>.3 A certificate pursuant to <i>Income Tax Act</i>, R.S.C. 1985, c. 1 (5th Supp.), s. 116, (regarding tax to be withheld by purchaser if the vendor is not a resident of Canada).</p> <p>.4 A directors’ resolution of the purchaser (if a company) authorizing the transaction.</p> <p>.5 If the vendor is a company, a director’s resolution of the vendor authorizing the transaction; plus, if the shares of the target company represent substantially all of the assets of the vendor, a special resolution of the shareholders of the vendor authorizing the transaction.</p>					

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<p>.6 Share register of the target company to show the transfer, issuance of new shares, and cancellation of old shares. Updated transparency register (see “New developments” in this checklist regarding federal and provincial requirements for transparency registers).</p> <p>.7 Waivers of any pre-emptive rights or rights of first refusal.</p> <p>.8 Officer’s certificate of the vendor, dated on the closing date, attesting to the accuracy of representations and warranties contained in the share purchase agreement, the fulfillment of the vendor’s pre-closing covenants, the waiver or fulfillment of the vendor’s conditions precedent, and such other matters as may be required under the purchase agreement.</p> <p>.9 Opinion of the vendor’s lawyer making proper qualifications and assumptions, with respect to the vendor or the target, or both, and asserting, among other things:</p> <p>(a) Valid incorporation of the company and the vendor.</p> <p>(b) The company and the vendor are in good standing.</p> <p>(c) All necessary steps and proceedings have been taken to effect share transfer and transaction.</p> <p>(d) Authorized and issued/outstanding share capital structure.</p> <p>(e) Outstanding shares are validly issued, fully paid, and non-assessable.</p> <p>(f) Agreement (and key ancillary agreement(s) if applicable, such as promissory notes) have been duly executed and delivered.</p> <p>(g) Agreement is fully enforceable against the vendor (the vendor’s lawyer should consider whether to grant this opinion).</p> <p>(h) Consider the above opinions, where necessary, regarding a corporate vendor.</p> <p><b>Note:</b> Many of the preceding items may be resisted by vendor’s counsel and may not be appropriate. Consider reviewing chapter 7 (Legal Opinions) in <i>Advising British Columbia Businesses</i> (CLEBC, 2006–) and the statements and opinions of the Solicitors’ Legal Opinions Committee of British Columbia, available through at <a href="http://www.cle.bc.ca/solicitors-legal-opinions/">www.cle.bc.ca/solicitors-legal-opinions/</a>.</p> <p>.10 Resignations of directors and officers and releases from them in favour of the target company (note that the vendor may request releases in favour of directors and officers).</p> <p>.11 Shareholders’ resolution appointing new directors.</p> <p>.12 Directors’ resolution appointing new officers.</p> <p>.13 Third-party consents as necessary.</p> <p>.14 Non-competition agreements.</p> <p>.15 Documentation transferring the registered and records office.</p> <p>.16 Amendment of employment agreement terms, if any.</p> <p>.17 Discharges of loans/charges to be discharged on closing.</p> <p>5.2 Ensure that the conditions of the client’s obligation to close have been or will be satisfied.</p> <p>5.3 Complete the financial arrangements.</p>					

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<p>5.4 Prepare the final draft of the closing agenda.</p> <p>5.5 Have the parties sign the necessary documentation prior to closing (to be held in escrow pending closing, if tabled) and coordinate the documents for each party. If using DocuSign or similar technology for document signing, obtain all applicable email addresses for the purchaser-side signatories; seek the vendor’s counsel’s consent if intending to send documents for signing directly to the vendor.</p> <p>5.6 Update searches for closing.</p> <p>5.7 Obtain cheques, or receipts for cheques, as necessary.</p> <p>5.8 Consider application of the <i>Proceeds of Crime (Money Laundering) and Terrorist Financing Act</i>, S.C. 2000, c. 17.</p> <p>5.9 Attend to or advise client to attend to any insurance matters for the target entity and business to be acquired.</p> <p>5.10 Consider the timing and management of funds (payment by wire transfers, lawyers’ trust accounts, Law Society trust administration fee, etc.). Use directions to pay as necessary. With regard to wire transfers, see Law Society Rules 3-64.1 and 3-64.2 and the <i>Trust Accounting Handbook</i> at <a href="http://www.lawsociety.bc.ca/docs/trust/Trust-Accounting-Handbook.pdf">www.lawsociety.bc.ca/docs/trust/Trust-Accounting-Handbook.pdf</a>.</p>					
<p><b>6. CLOSING</b></p>					
<p>6.1 Ensure that all the conditions of closing are satisfied or waived.</p> <p>6.2 Ensure that each party receives the appropriate documents and funds.</p> <p>6.3 Obtain acknowledgment in writing that all conditions of closing have been satisfied or waived.</p> <p>6.4 Complete any filings at registries as necessary including in particular changes of directors with the Corporate Registry. Note and attend to the requirements of the <i>LOTA</i>, where applicable; see “<i>Land Owner Transparency Act</i>” and “Transparency register” under “New developments” in this checklist. Register any financing statements and financing change statements that require registration at the Personal Property Registry. Do these registrations on or before closing, if possible.</p> <p>6.5 Obtain the definitive books and records of the target entity and update the corporate records to reflect the transaction.</p> <p>6.6 Obtain the company seal, if applicable.</p> <p>6.7 Attend to extraprovincial registration of the target entity, if intending to carry on business outside British Columbia. See “Manitoba joins NWPTA” under “New developments” in this checklist regarding the New West Partnership Trade Agreement and extraprovincial registration.</p>					
<p><b>7. POST CLOSING</b></p>					
<p>7.1 Prepare a reporting letter and account as soon as practicable after closing. Forward the documents to the client and indicate those matters requiring further action. Alternatively or additionally, advise the client to review the documents to determine what further action is required. Consider including a “post-closing” section in the closing agenda, setting out all post-closing matters (e.g., filings, registrations, deferred payments, press releases), and the party responsible for each matter.</p>					

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<p>7.2 Diarize any key post-closing dates and communicate applicable dates to the client and other advisors.</p> <p>7.3 Remind the client to make any tax filings in time; advise the client to confirm with their tax advisor what filings are required.</p> <p>7.4 Close the file. See the CLIENT FILE OPENING AND CLOSING (A-2) checklist.</p>					

