

ACTION TO BE CONSIDERED	NOTES
<p style="text-align: center;">INTRODUCTION</p> <p>Purpose and currency of checklist. 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 PROCEDURE (B-3) checklists. The provisions suggested in this checklist must be considered in relation to the particular facts in the matter at hand and augmented and revised as appropriate. The checklist is current to September 1, 2023.</p> <p>New developments:</p> <ul style="list-style-type: none"> • Enhanced scrutiny under the <i>Investment Canada Act, R.S.C. 1985, c. 28 (1st Supp.)</i>. 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 full policy statement and voluntary filing information. • Electronic meetings. On May 20, 2021, the majority of the provisions of the <i>Finance Statutes Amendment Act (No. 2)</i>, 2021, S.B.C. 2021, c. 14 came into effect by royal assent. The Act amends the <i>Business Corporations Act</i>, S.B.C. 2002, c. 57 (the “BCA”), as well as the <i>Cooperative Association Act</i>, S.B.C. 1999, c. 28; <i>Financial Institutions Act</i>, R.S.B.C. 1996, c. 141; and <i>Societies Act</i>, S.B.C. 2015, c. 18 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). • Arbitration Act. The <i>Arbitration Act</i>, S.B.C. 2020, c. 2, 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. • Land Owner Transparency Act. The <i>Land Owner Transparency Act</i>, S.B.C. 2019, c. 23 (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 new 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 Registry (the “LOTR”) any time an application is made to register or transfer an 	

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<p>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"> <p>Transparency register. 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 www2.gov.bc.ca/gov/content/employment-business/business/bc-companies/transparency-register.</p> <p>Exemptions on additional property transfer tax on foreign entities. 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> <p>Purpose-built rental exemption. 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 exemption and eligibility requirements can be found at 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.</p> 	

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<ul style="list-style-type: none"> • Business Corporations Act. Amendments to the <i>Business Corporations Act</i>, S.B.C. 2002, c. 57 (the “BCA”) 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. • Benefit companies. 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 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 (PDF) and Part 2.3 of the <i>BCA</i>. • Canada Business Corporations Act. Amendments to the <i>Canada Business Corporations Act</i>, R.S.C. 1985, c. C-44 (“CBCA”) 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 that require private <i>CBCA</i> corporations to 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 have to be included in the register. • MRAS. 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. • Manitoba joins NWPTA. 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 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 www.bcregistryservices.gov.bc.ca. 	

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<ul style="list-style-type: none"> • Competition Act. 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. <p>Of note:</p> <ul style="list-style-type: none"> • Aboriginal law. 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 (www.cle.bc.ca) and in other CLEBC publications. See also <i>Negotiating & Structuring Business Transactions with First Nations 2011</i> (CLEBC, 2011). • Money laundering—companies, trusts and other entities. 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: www.lawsociety.bc.ca/priorities/anti-money-laundering/. <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 & Verification resources webpage such as the Source of 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 (<i>Benchers’ Bulletin</i>, Spring 2021); and the Discipline Advisories including country/geographic risk and private lending. Lawyers may contact a Law Society practice advisor at practiceadvice@lsbc.org 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 “Anti-Money Laundering and Terrorist Financing in the Canadian Legal Profession”.</p>	

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<ul style="list-style-type: none"> • COVID-19 pandemic. 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"> ○ 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 https://ltsa.ca/covid-19-resources/. ○ Counsel conducting due diligence searches will need to 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. • Additional resources. For further information about share purchase procedures, see <i>Advising British Columbia Businesses</i> (CLEBC, 2006–); <i>Buying and Selling a Business: Annotated Precedents</i> (CLEBC, 2000–); and the <i>Due Diligence Deskbook</i> (CLEBC, 1994–). • Law Society of British Columbia. 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. <p style="text-align: center;">CONTENTS</p> <ol style="list-style-type: none"> 1. Initial Contact 2. Identification of Parties 3. Recitals 4. Definitions 5. Purchase Price and Sale 6. Vendor’s Representations and Warranties 7. Purchaser’s Representations and Warranties 8. Vendor’s Obligations—Prior to Closing 9. Conditions Precedent to Obligations of Purchaser 10. Conditions Precedent to Obligations of Vendor 11. Closing 12. Loss or Damage Prior to Closing 13. Indemnification 14. Vendor’s Obligations—Post-Closing 15. General Provisions 16. Schedules 	

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<p style="text-align: center;">CHECKLIST</p> <p>1. INITIAL CONTACT</p> <p>1.1 Complete the CLIENT FILE OPENING AND CLOSING (A-2) and SHARE PURCHASE PROCEDURE (B-3) checklists. 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>2. IDENTIFICATION OF PARTIES</p> <p>2.1 If the vendor is a limited company or other entity, consider whether the principals should be added as covenantors (usually dependent on the history and long-term (future) financial capability of the vendor; i.e., will the vendor retain any assets or operations after the sale?).</p> <p>3. RECITALS</p> <p>3.1 General statement of the legal relationship between, or roles of, the parties.</p> <p>3.2 General statement of the factual background to the transaction.</p> <p>4. DEFINITIONS</p> <p>4.1 Provide definitions for terms used throughout the agreement, consider including the scope and meaning of phrases such as “to the best of [one’s] knowledge” and “material adverse [change or effect]”.</p> <p>5. PURCHASE PRICE AND SALE</p> <p>5.1 Mutual obligations of vendor to sell and purchaser to purchase shares.</p> <p>5.2 Consider the following (non-exhaustive) potential structures for payment:</p> <p>.1 Deposit given on execution of agreement. Provision for increase of deposit to a certain dollar amount after all subjects removed, with deposit to be non-refundable but forming a part of the purchase price. Consider placing the deposit in an interest-bearing account with interest accruing to the purchaser’s credit (if long closing).</p> <p>.2 Fixed sum payable on closing (consider whether a pricing formula applies). If more than one purchaser, obligations to pay purchase price should be joint and several.</p> <p>.3 Fixed sum payable on closing, part of which is held in escrow to be offset against indemnities or breaches of representations and warranties, or is otherwise deferred.</p> <p>(a) Consider tax ramifications of any proposal deferral.</p> <p>(b) An escrow agent should be identified. Consider if one party’s counsel will hold the funds; consider use of a third-party escrow agent. In selecting an escrow agent, keep in mind Law Society Rule 3-58.1, which requires that, except as permitted by the <i>Legal Profession Act</i>, S.B.C. 1998, c. 9, the Law Society Rules, or otherwise required by law, a lawyer or law firm must not permit funds to be paid into or withdrawn from a trust account unless the funds are directly related to legal services provided by the lawyer or law firm.</p>	

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<p>(c) Consider terms of escrow and responsibilities of agent, and other terms for escrow agreement.</p> <p>(d) Consider use and application of an escrow or holdback of funds for other matters: pending litigation, environmental concerns, tax liabilities, etc.</p> <p>4. Fixed sum payable to vendor’s counsel on undertakings to pay out any security registered against the company or its assets.</p> <p>5. Working capital adjustment, including provisions for determining applicable financial statement/tax return responsibility and dispute resolution.</p> <p>6. Earn-out provisions.</p> <p>5.3 Manner and holding of payment.</p> <p>.1 Fixed sum on closing, drawn on a Canadian chartered bank and payable in Canadian funds:</p> <p>(a) Certified cheque.</p> <p>(b) Banker’s draft. (Note restrictions in Law Society Rule 3-64.3 with respect to withdrawal from trust by bank draft.)</p> <p>(c) Lawyer’s trust cheque.</p> <p>(d) Wire transfer. (Note restrictions in Law Society Rules 3-64.1 and 3-64.2.)</p> <p>(e) Cash. (Note restrictions in Law Society Rule 3-59 with respect to receiving cash and Rule 3-70 for records of cash transactions.)</p> <p>(f) Other.</p> <p>.2 Escrowed funds on deposit on closing in an interest-bearing trust account. See caution at item 5.2.3(b).</p> <p>5.4 If part of the purchase price is deferred, consider security in favour of the vendor pending payment of the deferred price (or where the transaction is otherwise vendor-financed) through restrictions on the conduct of the company’s business after closing, or other mechanisms. Many of these restrictions will also be relevant to the period between signing and closing, even if there is no deferral of payment.</p> <p>.1 Company to continue operations as a separate business, in the ordinary course.</p> <p>.2 Company to comply with all relevant laws in the jurisdiction in which the company carries on business.</p> <p>.3 Company to notify the vendor forthwith upon release of a “hazardous substance” (definition to be included) into the environment by the company, or any material change in the business or operations (adverse or otherwise).</p> <p>.4 Company to maintain adequate insurance coverage.</p> <p>.5 Company to make no commitments (by loan, guarantee, or other liability) increasing the company’s debt beyond a specified amount.</p> <p>.6 Maintain corporate goodwill on behalf of the purchaser.</p> <p>.7 Preserve relationships with suppliers, customers, employees, and others having dealings with the company.</p>	

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<ul style="list-style-type: none"> .8 Repair and maintain assets until the closing date, and no capital expenditures in excess of a specified amount. .9 Restrictions on the payment of dividends or other distributions. .10 Restrictions on salaries and bonuses. .11 Prohibitions against non-arm's-length management fees. .12 Prohibitions on other non-arm's-length transactions. .13 Prohibitions on reduction in working capital. .14 No redemption of issued shares. .15 No issuing of additional shares. .16 No alterations of constating documents such as memorandum, notice of articles, or articles. .17 No sale, encumbrance, or gift of corporate assets. .18 Shares to be held in escrow or pledged. .19 Right of vendor to inspect books and records as well as company premises. .20 Right of vendor to receive financial statements. .21 Right of vendor to receive notice of and attend shareholders' meetings and directors' meetings. .22 Right of vendor to have nominees sit on board of directors. .23 Mortgage on lands of purchaser including company, subject to compliance with s. 195 of the <i>Business Corporations Act</i>, S.B.C. 2002, c. 57. .24 General security agreement on assets of purchaser including company, subject to compliance with <i>Business Corporations Act</i>, s. 195. .25 Guarantees by third party. 	
<p>Note: many of these items may need to be qualified by the phrase "except in the ordinary course of business" or a materiality threshold, and may not be appropriate in the circumstances.</p>	
<p>6. VENDOR'S REPRESENTATIONS AND WARRANTIES</p> <p>Some of these representations and warranties should be given both with respect to the vendor and the target company. Consider extending them to any subsidiaries or significant interests, such as partnerships and joint ventures.</p> <p>6.1 Corporate status.</p> <ul style="list-style-type: none"> .1 Valid incorporation. .2 Good standing. .3 Private, non-reporting company. .4 No business carried on outside province except as stated. .5 Compliance with extraprovincial and other applicable licensing, registration, or qualification requirements. .6 Constating documents (such as memorandum, notice of articles, and articles) are unchanged since a specified date, and accurate copies are provided. 	

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<p>.7 Constatng documents (such as memorandum, notice of articles, and articles) permit company to own its present assets, and to carry on its present business.</p> <p>6.2 Capital structure.</p> <p>.1 Number of authorized shares.</p> <p>(a) Common (par value or N.P.V. voting rights).</p> <p>(b) Preferred.</p> <p>.2 Number of issued shares.</p> <p>(a) Common.</p> <p>(b) Preferred.</p> <p>.3 Issued shares are fully paid and non-assessable.</p> <p>.4 The company has no other issued, or agreements to issue, securities, options, rights, etc.</p> <p>6.3 Number of shares owned by the vendor.</p> <p>.1 Common.</p> <p>.2 Preferred.</p> <p>6.4 List of directors and officers of the company.</p> <p>6.5 Vendor's right to sell and perform obligations in accordance with the agreement.</p> <p>.1 Good and marketable title, free and clear (consider whether this is appropriate for all assets, such as contracts).</p> <p>.2 Sale has been authorized by all necessary corporate action.</p> <p>.3 No encumbrances, except as set out in the agreement.</p> <p>.4 No contractual or regulatory consents, licences, permits or approvals required, except as set out in the agreement.</p> <p>.5 No options.</p> <p>.6 No shareholders' agreements.</p> <p>.7 No beneficial interest of third parties.</p> <p>.8 No restrictions imposed by constating documents (such as memorandum, notice of articles, or articles).</p> <p>.9 No contrary court orders.</p> <p>.10 No triggering event has occurred under the <i>Family Law Act</i>, S.B.C. 2011, c. 25, s. 81 (or, if applicable, the former legislation, <i>Family Relations Act</i>, R.S.B.C. 1996, c. 128, s. 56). Note that under the <i>Family Law Act</i>, the only triggering event would be the date of separation.</p> <p>.11 No other outstanding agreements or securities that carry the right to acquire shares.</p> <p>.12 Agreement is a legal, valid, and binding obligation of the vendor and the target company.</p> <p>6.6 Schedule of company assets.</p> <p>.1 Inventory.</p> <p>.2 Accounts receivable.</p>	

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<p>.3 Real estate.</p> <p>.4 Leases, licences, and permits.</p> <p>.5 Machinery, equipment, and vehicles.</p> <p>.6 Furniture and accessories.</p> <p>.7 Intellectual property and intangibles (trade secrets, brand names, patents, etc.).</p> <p>.8 Material contracts.</p> <p>.9 Computer equipment (a separate class according to the <i>Income Tax Act</i>, R.S.C. 1985, c. 1 (5th Supp.)).</p> <p>.10 Buildings.</p> <p style="padding-left: 20px;">(a) Located within the property of the company.</p> <p style="padding-left: 20px;">(b) Built in accordance with all laws, particularly zoning.</p> <p style="padding-left: 20px;">(c) In good repair.</p> <p style="padding-left: 20px;">(d) Not subject to government work orders.</p> <p style="padding-left: 20px;">(e) Company has no notice of non-compliance.</p> <p style="padding-left: 20px;">(f) No encroachment on any right of way.</p> <p style="padding-left: 20px;">(g) Vendor has no notice of an intention to expropriate property of the company or of any change in bylaws that would affect use of the property.</p> <p>6.7 Environmental matters.</p> <p>.1 Properties and buildings are free from hazardous substances (e.g., asbestos) and in compliance with all laws. Company has all permits and approvals.</p> <p>.2 No underground storage tanks exist on the properties.</p> <p>.3 Company has handled, stored, treated, shipped, and disposed of hazardous substances in compliance with all laws.</p> <p>.4 Company has not had an environmental audit or assessment conducted with respect to the company or property owned by the company. (Consider contaminated sites legislation and possible audit.) No notice of violation, investigation, or potential responsibility for corrective action.</p> <p>.5 Consider other environmental matters (and appropriate representations), depending on the nature of the business and any potential risks (e.g., migration).</p> <p>6.8 Right of company to assets.</p> <p>.1 Good and marketable title (as in item 6.5.1 of this checklist, consider whether this is appropriate for all assets).</p> <p>.2 No liens or encumbrances, except as set out in agreement.</p> <p style="padding-left: 20px;">(a) General security agreements.</p> <p style="padding-left: 20px;">(b) Mortgages on land.</p> <p style="padding-left: 20px;">(c) Debentures (both fixed and floating charge).</p> <p style="padding-left: 20px;">(d) Assignments of book accounts.</p> <p style="padding-left: 20px;">(e) Security under the <i>Bank Act</i>, S.C. 1991, c. 46, s. 427.</p> <p>.3 No beneficial interest of third parties.</p>	

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<p>.4 Right of company to its trade names, trademarks, and other intellectual property; no notice of infringement. Consider more extensive intellectual property provisions where applicable to the business.</p> <p>.5 Vendor (or any of the directors, officers or shareholders, if a company, or relatives, if an individual) or another company does not own assets used by company (alternative to use of schedule).</p> <p>.6 All assets are used in the business; no other assets are necessary to operate the business.</p> <p>.7 No contracts that commit the company's production to third parties.</p> <p>6.9 Execution or performance of the agreement will not result in:</p> <p>.1 Violation of any constating documents (such as memorandum, notice of articles, or articles) or any law, order, decree, statute, bylaw, or regulation applicable to the company or its assets.</p> <p>.2 Third party having right to terminate contractual or other rights of company.</p> <p>.3 Creation of liens or encumbrances on company assets.</p> <p>.4 Default under any agreement giving third-party security in company assets or rights against the company or its assets.</p> <p>.5 Crystallization of floating charge.</p> <p>.6 Any fees, duties, taxes, assessments, or other amounts relating to any assets of the company becoming due and payable.</p> <p>6.10 Full disclosure of transactions between the company and the vendor, the vendor's family, affiliated companies, directors, officers, shareholders, and other insiders (as applicable).</p> <p>.1 Employment contracts.</p> <p>.2 Management contracts.</p> <p>.3 Other contracts (particularly, material contracts).</p> <p>.4 Debts of company to the vendor or insiders or these other parties.</p> <p>.5 Debts of vendor or insiders to the company or these other parties.</p> <p>.6 Payments to the vendor or insiders or these other parties authorized by the company, other than payments authorized pursuant to contracts listed in items 6.10.1, 6.10.2, and 6.10.3 in this checklist.</p> <p>6.11 Conduct of business.</p> <p>.1 Date of last authorization of dividends or other distribution.</p> <p>.2 Amount of total authorized capital expenditures, no expenditures, or commitments in excess of a specified limit since the date of financial statements.</p> <p>.3 No waiver or surrender of rights.</p> <p>.4 Incurred no obligations or liabilities and no premature payment of debts or discharge of other liabilities.</p> <p>.5 No dispositions or acquisitions of any property.</p> <p>.6 Material transactions are properly recorded and filed.</p>	

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<p>.7 Minutes of shareholders' and directors' meetings (and all other corporate records) are accurate and complete.</p> <p>.8 Company's assets are properly insured, including against public liability.</p> <p>.9 All assets are properly maintained and, where needed, repaired or replaced.</p> <p>.10 Company has issued no guarantees or indemnities, or entered into any agreements.</p> <p>.11 There have been no pay increases or agreements to increase pay to directors and officers since a stipulated date, and no pay increases or agreements to increase pay to employees except in the ordinary course of business.</p> <p>.12 Company has not paid or agreed to pay any benefits under a pension, profit-sharing, bonus, or other similar plan, except as stated.</p> <p>.13 All transactions are in the ordinary course of business.</p> <p>.14 List of company's major customers and suppliers.</p> <p>.15 No termination of any operations or arrangements with any customer or supplier.</p> <p>.16 No changes in billing arrangements or credit terms.</p> <p>.17 No material change in business or operations (adverse or otherwise).</p> <p>.18 No extraordinary or material loss or damage.</p> <p>6.12 Accuracy of the balance sheet and financial statements.</p> <p>.1 True, correct and complete; fairly represent financial position of company.</p> <p>.2 Generally Accepted Accounting Principles (GAAP), International Financial Reporting Standards (IFRS), or Accounting Standards for Private Enterprises (ASPE) are applied on a basis consistent with previous years.</p> <p>.3 Full disclosure of all material financial transactions.</p> <p>.4 Full disclosure of current and contingent liabilities.</p> <p>.5 Adequacy of provision for doubtful accounts receivable.</p> <p>.6 Basis on which inventory is valued (typically, at the lower of cost or realizable value).</p> <p>.7 No more than a stipulated percentage (typically 10%) of the inventory is obsolete or unsaleable in the ordinary course of business.</p> <p>.8 Federal income tax returns and GST/HST returns have been examined by the Canada Revenue Agency to a specified year or reporting period, and the balance sheet reflects the results.</p> <p>.9 No adverse material change in company's financial position since date of statements.</p> <p>.10 Prepaid expenses outlined in schedule.</p> <p>.11 Refundable deposits outlined in schedule.</p> <p>.12 No liabilities or indebtedness except as presented or in a schedule.</p> <p>6.13 Contracts.</p>	

ACTION TO BE CONSIDERED	NOTES
<p>.1 Company is not in default under any contracts. All contracts between the company and dealers, customers, or suppliers are in good standing and have not been assigned or encumbered.</p> <p>.2 Contractual obligations not altered, violated, or breached by completion of this transaction.</p> <p>.3 No contracts involve total liability in excess of a specified sum except those set out in schedule.</p> <p>.4 Notice period for termination without further liability of contracts with third parties is as follows:</p> <ul style="list-style-type: none"> (a) Directors. (b) Officers. (c) Employees. (d) Management firms. (e) Accountants. (f) Lawyers. (g) Agents. (h) Suppliers or customers. (i) Distributors. (j) Lessors. (k) Lessees. (l) Any other material contracts. <p>.5 There are no agreements to provide severance pay or separation allowances. No change-of-control agreements.</p> <p>.6 No obligations to pay benefits or share profits will survive termination of employment or service contracts.</p> <p>.7 No collective agreement is in force or under negotiation.</p> <p>.8 Leases on real property or equipment.</p> <ul style="list-style-type: none"> (a) Validity. (b) Compliance with registration requirements. (c) Rents have been paid. (d) Company and other party not in breach of terms, and company entitled to all benefits. (e) Company has not assigned, sublet, or encumbered its interest under the leases. (f) Terms not altered, breached, or violated by completion of transaction. <p>6.14 Labour issues.</p> <ul style="list-style-type: none"> .1 Employees are set out in schedule with name, job title, duration of employment, vacation, and remuneration. Consider list of those on leave or disability. .2 No employees of the company are represented by a certified bargaining unit. .3 No applications for certification are pending. 	

ACTION TO BE CONSIDERED	NOTES
<p>.4 No attempt has been made to certify. No threat of strike or other disturbance.</p> <p>6.15 Pension and benefits issues.</p> <p>.1 No pension or any other benefit plan except as specified. Copies provided.</p> <p>.2 List of all policies and procedures regarding vacation, disability, etc.</p> <p>.3 Pension plans registered and in compliance with applicable law. No unfunded liability. No changes. It is important to consider obtaining tax and actuarial assistance in calculating liability for post-retirement benefits.</p> <p>.4 Stock options or other incentive or profit-sharing plans.</p> <p>6.16 Company's legal position.</p> <p>.1 Company holds all permits, licences, registrations, and authorizations needed to own and operate its assets and carry on its business.</p> <p>.2 Property is zoned to permit existing operations.</p> <p>.3 Company's operations do not infringe any registered patent, trademark, or copyright.</p> <p>.4 Company is not in breach of any law or court order.</p> <p>.5 Company (and operation of business) is not in breach of any statute, regulation, or bylaw. Consider specific items, such as privacy and personal information legislation.</p> <p>.6 No pending change in statutes, regulations, or bylaws (including zoning) will render any part of the company's present operations illegal.</p> <p>.7 No litigation against company is in progress, pending, or threatened. Consider extending representations and warranties to major customers and suppliers.</p> <p>.8 Company has a valid defence to any actual or potential lawsuits (specify).</p> <p>.9 Company has not experienced, nor is it aware of any occurrence or event which has, or might reasonably be expected to have, a material adverse effect on the business or the results of its operations.</p> <p>.10 No outstanding work orders or deficiencies.</p> <p>.11 Condition of properties and equipment.</p> <p>.12 No subsidiaries or other interests.</p> <p>.13 Listing, adequacy and status of insurance.</p> <p>6.17 Company tax returns.</p> <p>.1 True and timely filing of all federal, provincial, and local tax returns (income, sales, GST/PST/HST, corporation capital tax, employee deduction remittances) in accordance with applicable law. Further information can be found at www.canada.ca/en/services/taxes.html and www2.gov.bc.ca/gov/content/home.</p> <p>.2 Tax liability is as indicated by returns. Complete and correct copies provided.</p> <p>.3 Timely payment of taxes shown on returns; no tax liability other than as disclosed in current financial statements.</p> <p>.4 All required withholdings and remittances made.</p>	

ACTION TO BE CONSIDERED	NOTES
<p>.5 No property tax owing.</p> <p>.6 Company (if an importer) has paid all customs, excise, and federal sales tax and none of its goods are affected by a notice of seizure.</p> <p>.7 No elections have been made under <i>Income Tax Act</i>, s. 83 or 85.</p> <p>.8 All elections required in connection with distributions have been made.</p> <p>.9 No acquisitions of property from persons not at arm's length.</p> <p>.10 No dispositions of property to persons not at arm's length.</p> <p>.11 Adequate provision made for current tax liability.</p> <p>.12 Company not aware of contingent liabilities or grounds for reassessment.</p> <p>.13 Assessments issued up to a particular date; no actions, suits, proceedings, etc. regarding tax matters.</p> <p>.14 No waiver of statutory time limits for assessments.</p> <p>6.18 Review the company's tax status with a tax advisor (consider which tax issues and attributes are most relevant to the business).</p> <p>6.19 Vendor is not a "non-Canadian" within the meaning of <i>Investment Canada Act</i>, R.S.C. 1985, c. 28 (1st Supp.), s. 3.</p> <p>6.20 Vendor is not a non-resident of Canada within the meaning of <i>Income Tax Act</i>, s. 116.</p> <p>6.21 Vendor is a GST/HST "registrant" for the purposes of Part IX of the <i>Excise Tax Act</i>.</p> <p>6.22 Consider application of the <i>Competition Act</i>, R.S.C. 1985, c. C-34, and any need for representations and warranties regarding the size of the vendor for the purpose of the pre-notification provisions of that Act. Consider application for an advance ruling certificate (<i>Competition Act</i>, s. 102).</p> <p>6.23 Representations and warranties survive closing. Warranties and representations are made as at the date of execution and, subject to specified exceptions, will be true at the date of closing.</p> <p>6.24 Time and dollar limits on representations and warranties. See item 13 in this checklist.</p> <p>6.25 Incorporate recitals as appropriate.</p> <p>Note: Some of the representations and warranties may need to be qualified by the phrase "except in the ordinary course of business" or with a materiality threshold or a knowledge qualifier. (Vendor's counsel will seek such qualifiers.) Compare also with item 5.4 in this checklist.</p>	
<p>7. PURCHASER'S REPRESENTATIONS AND WARRANTIES</p> <p>7.1 Purchaser's corporate status.</p> <p>.1 Valid incorporation.</p> <p>.2 Good standing.</p> <p>.3 Status under the <i>Investment Canada Act</i>. (Give notice or apply for review pursuant to the <i>Investment Canada Act</i>, if foreign investment.)</p> <p>.4 Consider size of the purchaser, as in item 6.2.1 (authorized shares) in this checklist for vendor.</p>	

ACTION TO BE CONSIDERED	NOTES
<p>7.2 Purchaser’s right to purchase.</p> <ul style="list-style-type: none"> .1 No conflict with constating documents such as memorandum, notice of articles, and articles. .2 No conflict with any agreement to which the purchaser is a party. .3 No third-party consents are required to purchase shares. .4 Purchase has been authorized by all necessary corporate action. <p>7.3 Representations and warranties survive closing.</p>	
<p>8. VENDOR’S OBLIGATIONS—PRIOR TO CLOSING</p>	
<ul style="list-style-type: none"> 8.1 See matters listed in item 5.4 in this checklist. 8.2 Consider inclusion of break or termination fee (i.e., to cover cost and expenses of transaction) in case the vendor fails to complete the sale. 	
<p>9. CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER</p>	
<ul style="list-style-type: none"> 9.1 Accuracy of all representations and warranties as of closing date. 9.2 Vendor not in breach of any obligations and has performed its obligations. 9.3 Purchaser has received an opinion from a stipulated law firm asserting: <ul style="list-style-type: none"> .1 Valid incorporation of company. .2 The company is in good standing. .3 All necessary steps and proceedings have been taken to effect share transfer and appropriate transaction. .4 Authorized and issued/outstanding capital share structure. .5 Outstanding shares are validly issued, fully paid, and non-assessable. .6 Agreement (and key ancillary agreement(s) if applicable, such as promissory notes) have been duly executed and delivered. .7 Agreement is fully enforceable against the vendor (as well as any key ancillary agreements). 	
<p>Note: some of these opinions will be resisted by vendor’s counsel and may not be appropriate; see <i>Advising British Columbia Businesses</i> (CLEBC, 2006–) and <i>Buying and Selling a Business: Annotated Precedents</i> (CLEBC, 2000–).</p>	
<ul style="list-style-type: none"> .8 Consider whether some of these opinions should also be obtained with respect to shareholders who are parties, or the vendor(s). 9.4 Delivery of documents to the purchaser. 9.5 No laws are passed before closing that adversely affect the business of the company or the right of the purchaser to the full enjoyment of corporate assets. 9.6 Favourable review of acquisition of shares, if required by the <i>Investment Canada Act</i> or the <i>Competition Act</i>. 9.7 No adverse condition or action affecting the assets or business of the company that would materially adversely affect, or reduce the value of, those assets (as a whole) or business. 9.8 No damage by fire, negligence, or otherwise to the assets materially affecting the assets or business of the company. 	

ACTION TO BE CONSIDERED	NOTES
<p>9.9 No court action prohibiting purchase.</p> <p>9.10 No court action materially prohibiting or adversely affecting the right of the company to carry on its business.</p> <p>9.11 Statement that conditions precedent are for the sole benefit of the purchaser and can be waived by the purchaser without prejudice.</p> <p>Note: Consider other major items that may be material to the transaction or the business.</p>	
<p>10. CONDITIONS PRECEDENT TO OBLIGATIONS OF VENDOR</p> <p>10.1 Accuracy of all representations and warranties as of the closing date.</p> <p>10.2 Purchaser is not in breach of any obligations and has performed its obligations.</p> <p>10.3 Production of certified cheque or bank draft (or other agreed form of payment) in required amount at closing.</p> <p>10.4 Payment of escrowed funds into trust account by time of closing.</p> <p>10.5 Release of vendor from obligations under specified guarantees of the indebtedness of the company (alternatives: pay off debts, indemnify vendor). Consider this for directors, officers, and shareholders, as applicable.</p> <p>10.6 Purchaser puts up required security (if deferred payments).</p> <p>10.7 Favourable review of acquisition of shares, if required by the <i>Investment Canada Act</i> or the <i>Competition Act</i>.</p> <p>10.8 Opinion of purchaser’s counsel, in form and substance satisfactory to vendor’s counsel. (See item 9.3 in this checklist—including the cautionary note—as applied to the purchaser.)</p> <p>10.9 Statement that conditions precedent are for the sole benefit of the vendor and can be waived by the vendor without prejudice.</p>	
<p>11. CLOSING</p> <p>11.1 Date, time, and place, or as the parties otherwise agree in writing. Consider electronic closing through exchange of documents between legal counsel and applicable written undertaking arrangements between counsel. See <i>BC Code</i> rule 7.2-11 (Undertakings and Trust Conditions).</p> <p>11.2 Right of the parties to defer closing until a certain date, as agreed.</p> <p>11.3 Exchange of documents (electronic closing if applicable).</p> <p>.1 Existing share certificates endorsed for transfer (or with appropriate instrument of transfer). New share certificates in the purchaser’s name.</p> <p>.2 Resignations of officers and directors (and releases, if required by vendor or purchaser or both). Consents to act and appointments of new directors and officers.</p> <p>.3 Books, records, and company seal.</p> <p>.4 Minutes of directors’ meetings or unanimous directors’ resolutions in writing authorizing transfer of shares and the transaction. Consider similar resolutions for corporate vendor, together with shareholders’ resolution (if applicable).</p> <p>.5 Title documents for corporate assets.</p>	

ACTION TO BE CONSIDERED	NOTES
<ul style="list-style-type: none"> .6 Certificates of accuracy of representations and warranties. .7 Certificate under <i>Income Tax Act</i>, s. 116(2) or (4) (non-resident vendor only). .8 Assignment of vendor's loans. .9 Discharges of security to be discharged on closing. .10 Opinions of solicitors. .11 Evidence of compliance with the <i>Investment Canada Act</i>, <i>Competition Act</i>, and other statutes, as required. .12 Any additional contracts contemplated in the agreement (for example, any employment agreement amendments). .13 Consents and approvals (including from third parties such as landlords). .14 All other documents required by the purchaser. 	
<p>11.4 Payment of purchase price.</p>	
<p>12. LOSS OR DAMAGE PRIOR TO CLOSING</p>	
<ul style="list-style-type: none"> 12.1 If the loss or damage materially affects the assets or business of the company. <ul style="list-style-type: none"> .1 Terminate the contract (consider disposition of deposit). .2 Complete the contract. <ul style="list-style-type: none"> (a) Pay the insurance proceeds to the purchaser. (b) Assign the insurance proceeds to the purchaser. .3 Adjust the purchase price. 	
<p>13. INDEMNIFICATION</p>	
<ul style="list-style-type: none"> 13.1 Vendor will indemnify purchaser for breach of representation, warranty, or covenant. 13.2 Purchaser will indemnify vendor for breach of representation, warranty, or covenant. 13.3 Indemnities to survive closing. 13.4 Consider duration of survival, caps, and other limitations on indemnities; see <i>Buying and Selling a Business: Annotated Precedents</i> (CLEBC, 2000–). 	
<p>14. VENDOR'S OBLIGATIONS—POST-CLOSING</p>	
<ul style="list-style-type: none"> 14.1 Promise not to compete with business presently carried on by company. <ul style="list-style-type: none"> .1 Scope (specify reasonable time and geographic limits). .2 Employment, investment, or other association with competing corporations or firms prohibited. 	
<p>15. GENERAL PROVISIONS</p>	
<ul style="list-style-type: none"> 15.1 Further assurances. 15.2 Entire agreement (supersedes any letter of intent, etc.). 15.3 Merger of oral representations. 15.4 No collateral agreements. 	

ACTION TO BE CONSIDERED	NOTES
<p>15.5 Termination, modification, or waiver in writing only, signed by the parties.</p> <p>15.6 Survival (representations, warranties, but consider other clauses that should survive closing or a termination of the agreement).</p> <p>15.7 Successors and assigns.</p> <p>15.8 Limitations on assignability.</p> <p>15.9 Choice of law and attornment to jurisdiction.</p> <p>15.10 Choice of exclusive forum. If selecting arbitration, include appropriate terms, with reference to the applicable legislation.</p> <p>15.11 Liquidated damages, if applicable.</p> <p>15.12 Joint and several liability of vendors (if more than one).</p> <p>15.13 Time of essence, if considered desirable.</p> <p>15.14 Notices.</p> <p style="padding-left: 20px;">.1 Addresses for service.</p> <p style="padding-left: 20px;">.2 Prepaid registered mail or other arrangement.</p> <p style="padding-left: 20px;">.3 Deemed date of receipt.</p> <p>15.15 Nominees.</p> <p>15.16 Publicity.</p> <p style="padding-left: 20px;">.1 Press releases.</p> <p style="padding-left: 20px;">.2 Confidentiality of transaction details and agreement provisions both before and after closing, to include directors, officers, customers, suppliers, and employees of all companies involved.</p> <p>15.17 Default.</p> <p style="padding-left: 20px;">.1 Terminate the contract.</p> <p style="padding-left: 20px;">.2 Adjust the purchase price.</p> <p style="padding-left: 20px;">.3 Provide for waiver of default.</p> <p>15.18 Severability of unenforceable clauses.</p> <p>15.19 General interpretation and construction.</p> <p style="padding-left: 20px;">.1 Principles that govern the interpretation of the agreement.</p> <p style="padding-left: 40px;">(a) Insertion of headings for convenience only.</p> <p style="padding-left: 40px;">(b) Masculine/feminine form.</p> <p style="padding-left: 40px;">(c) Singular/plural form.</p> <p style="padding-left: 40px;">(d) Use of the word “includes”.</p> <p style="padding-left: 40px;">(e) No <i>contra proferentem</i>.</p> <p style="padding-left: 20px;">.2 Reference to currency.</p> <p style="padding-left: 20px;">.3 Reference to time.</p> <p style="padding-left: 20px;">.4 Schedules are part of the agreement.</p> <p>15.20 Costs of the transaction.</p> <p>15.21 Counterparts and electronic delivery.</p>	

ACTION TO BE CONSIDERED	NOTES
<p>16. SCHEDULES</p> <p>Note: Example schedules; actual schedules subject to provisions of agreement.</p> <ul style="list-style-type: none">16.1 Audited Financial Statements.16.2 Unaudited Financial Statements.16.3 Company Assets.16.4 Material Contracts.16.5 Accounting Principles.16.6 Permitted Encumbrances.16.7 Leases, Licences and Permits.16.8 Employees.16.9 Pension and Benefit Plans, and Incentive Arrangements.16.10 Environmental Compliance Exemptions.16.11 Other schedules as necessary.	