

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 PARTNERSHIP AGREEMENT DRAFTING (B-9) checklists. It 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><i>Arbitration Act</i>.</b> 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.</li> <li>• <b><i>Land Owner Transparency Act</i>.</b> The <i>Land Owner Transparency Act</i>, S.B.C. 2019, c. 23 (the “<i>LOTA</i>”) 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 Registry (the “<i>LOTR</i>”) 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. A partner of a relevant partnership applying to register an interest in land under the <i>Land Title Act</i> must submit a declaration confirming whether it is a reporting body, as well as a transparency report setting out specified information about individual partnership interest holders. This specified information will be publicly available on the <i>LOTR</i>. For further information, see 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 (<i>LOTR</i>)” in <i>Real Estate Development Update 2021</i> (CLEBC, 2021), available through CLEBC Courses on Demand.</li> <li>• <b>MRAS.</b> The Multi-Jurisdictional Registry Access Service (the “<i>MRAS</i>”) was introduced on June 29, 2020. The <i>MRAS</i> allows for the sharing of information under the New West Partnership Trade Agreement (the “<i>NWPTA</i>”). Extraprovincial registration (or cancellation thereof) under the <i>NWPTA</i> must be made through each extraprovincial jurisdiction, and not through the home jurisdiction. For instance, prior to June 29, 2020, when a British Columbia company</li> </ul>					

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<p>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.</p> <ul style="list-style-type: none"> <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 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>. </li> </ul> <p><b>Of note:</b></p> <ul style="list-style-type: none"> <li> <b>Aboriginal law.</b> Special considerations apply to partnership involving Indigenous persons or 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. Businesses engaging in activities on First Nations lands, lands subject to treaty rights, or lands over which there are claims of Aboriginal rights or title are strongly encouraged to familiarize themselves with applicable laws and policies. 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) as well as M.J. MacDonald, “First Nations Partnerships”, in <i>Working with Partnerships 2016</i> (CLEBC, 2016), available through CLEBC Courses on Demand. </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: <a href="https://www.lawsociety.bc.ca/priorities/anti-money-laundering/">https://www.lawsociety.bc.ca/priorities/anti-money-laundering/</a>. </li> </ul>					

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<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 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 <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.</p> <ul style="list-style-type: none"> <li>• <b>Tax Alert.</b> As many aspects of a partnership agreement may have significant tax implications for the parties, it is recommended the parties seek advice from their respective tax advisors on the formation and governance of the partnership.</li> <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 partnership agreements, see <i>Advising British Columbia Businesses</i> (CLEBC, 2006–), <i>Partnerships and Societies for Legal Support Staff and Junior Lawyers 2011</i> (CLEBC, 2011), and <i>Working with Partnerships 2016</i> (CLEBC, 2016).</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).</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. Closing the File</li> </ol>					

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<p><b>CHECKLIST</b></p> <p><b>1. INITIAL CONTACT</b></p> <p>1.1 Arrange the initial interview.</p> <p>1.2 Ask the client to bring all relevant information to the initial interview.</p> <p>1.3 Conduct a conflict of interest check and 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 (Law Society Rule 3-110).</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.</p> <p>2.2 Clarify your role and that of other advisors to the client. Make it clear for whom you are acting. If you will be retained by more than one party, comply with <i>Code of Professional Conduct for British Columbia</i> (the “BC Code”, rules 3.4-5 to 3.4-9, 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 (BC Code”, rule 7.2-9).</p> <p>2.3 Discuss the background of the parties and their relationship, the business of the partnership, the general nature of the proposed agreement as the client understands it, and the client’s objectives and expectations.</p> <p>2.4 Determine whether the parties can incorporate rather than form a partnership and, if so, discuss the relative advantages and disadvantages of incorporation.</p> <p>2.5 Discuss the definition and tests for the existence of a partnership (<i>Partnership Act</i>, ss. 1 to 4), including the fact that a general partnership can exist in the absence of a partnership agreement, and may exist already, depending on the conduct of the parties. A limited partnership does not arise when an agreement is executed, but only when a certificate is filed (<i>Partnership Act</i>, s. 51). Similarly, a limited liability partnership arises only when a registration statement is filed, although it may have existed as a general or a limited partnership before filing. Any business carried on by the parties before filing may be carried on as a general partnership. Advise the client that entering into negotiations in respect of a partnership agreement can give rise to fiduciary obligations.</p> <p>2.6 Discuss the advantages and disadvantages of general and limited partnerships, and the possibility of registering as a limited liability partnership, including that an existing general partnership or limited partnership may register as a limited liability partnership.</p> <p>2.7 Where a general partnership is to be established, discuss the relevant provisions of the <i>Partnership Act</i>, including:</p> <p>.1 Agency, effect of actions of a partner (ss. 7 to 10 and 16 to 18).</p>					

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<p>.2 Liability of partners (ss. 11 to 15, subject to s. 95(2) in the case of a limited liability partnership, and s. 19).</p> <p>.3 Duties and rights of partners (ss. 22, 27, 31 to 33, and 40 to 47).</p> <p>.4 Partnership property and judgments (ss. 23 to 27).</p> <p>.5 Assignment of interest (s. 34).</p> <p>.6 Effect of a change in constitution (ss. 20 and 39).</p> <p>.7 Expulsion of a partner (s. 28).</p> <p>.8 Termination and continuation of a partnership (ss. 29 and 30).</p> <p>.9 Dissolution (ss. 35 to 38).</p> <p>.10 Where the partnership is formed for trading, manufacturing, or mining purposes, the requirement to file a registration statement and to amend it as required (ss. 81 to 88).</p> <p>.11 Limitations on names similar to corporations (s. 89).</p> <p>2.8 Where a limited partnership is to be established, discuss the relevant provisions of the <i>Partnership Act</i>, including:</p> <p>.1 Such provisions set out in item 2.7 of this checklist as are applicable (s. 49).</p> <p>.2 The formation of a limited partnership occurs only upon the filing of a certificate (s. 51), and that any prior activity may be as partners without limited liability.</p> <p>.3 Limitations on names similar to corporations (s. 89).</p> <p>.4 The need to amend the certificate as required (s. 70) or to cancel it (s. 69).</p> <p>.5 The requirement that there be at least one limited and one general partner (s. 50).</p> <p>.6 The ability of a partner to be both a general and a limited partner (s. 52).</p> <p>.7 Requirements for maintaining an office and records (ss. 54 and 70).</p> <p>.8 Powers and rights of general partners (ss. 56, 73, and 78).</p> <p>.9 Powers and rights of limited partners (ss. 55, 58 to 62, 66, 68, and 73).</p> <p>.10 Liability of limited partners (ss. 57, 63, 64, and 68).</p> <p>.11 Addition of limited partners (s. 65).</p> <p>.12 Assignment of a limited partner's interest (s. 66).</p> <p>.13 Partnership property and judgments (s. 76).</p> <p>.14 Dissolution (s. 67).</p> <p>.15 Renunciation by a person who mistakenly believed itself to be a limited partner (s. 75).</p> <p>2.9 If a limited liability partnership is to be used, discuss the relevant provisions of the <i>Partnership Act</i>, including:</p> <p>.1 That Parts 1, 2, 4, and 5 apply (s. 95(1)), except as provided in s. 95(2)).</p> <p>.2 Limitations on names similar to corporations (s. 89).</p> <p>.3 Limited personal liability of partners is addressed in ss. 104, 105, and 106.</p>					

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<p>.4 Partners in a limited liability partnership may be personally liable in respect of a partnership obligation if and to the same extent as a director would be liable for the obligations of a limited company (excluding common-law obligations and those under <i>Business Corporations Act</i>, S.B.C. 2002, c. 57, s. 142), and directors of a corporation that is itself a partner in a limited liability partnership have the same potential liability (s. 105).</p> <p>.5 A partner in a limited liability partnership retains liabilities that arose in an existing partnership before it became a limited liability partnership (s. 106).</p> <p>.6 Upon registration of a partnership as a limited liability partnership, existing clients must be notified (s. 107).</p> <p>.7 Records must be maintained (s. 109) in a registered office in British Columbia (s. 108).</p> <p>.8 Annual reports and changes in the registration statement must be filed (ss. 110 and 111).</p> <p>.9 There are restrictions on distributions of partnership property of a limited liability partnership, and liability for a distribution contrary to such provisions (ss. 112 and 113).</p> <p>.10 Winding-up and dissolution require notice and may be subject to court order (ss. 126 and 127).</p> <p>.11 Registration may be cancelled by the registrar (s. 129), although it is not thereby dissolved, and the <i>Partnership Act</i> applies to it as if the partners were partners in a general partnership.</p> <p>2.10 Discuss <i>Partnership Act</i> provisions that may be modified by agreement: e.g., rights, duties, powers, and liabilities of partners (ss. 21, 27, 32, 33, 45 to 47, 56, 59, 61, 63, and 78); expulsion (s. 28); termination of the partnership (s. 29); dissolution (ss. 35, 36, and 67); partnership property (ss. 23(3) and 24); and assignment of a limited partner's interest (s. 66).</p> <p>2.11 Discuss in detail the proposed agreement, referring to the clauses set out in the PARTNERSHIP AGREEMENT DRAFTING (B-9) checklist. Include key points and <i>Partnership Act</i> provisions:</p> <p>.1 Who are to be the partners:</p> <p>(a) Partners may be individuals, corporations, partnerships, or legal representatives.</p> <p>(b) Consider the desirability of a Canadian residency requirement in light of provisions under the <i>Income Tax Act</i>, R.S.C. 1985, c. 1 (5th Supp.), permitting a partner to transfer property to a Canadian partnership, and sections permitting dissolution in certain circumstances, without immediate tax cost. Note that including a residency requirement will also necessitate including a provision for expulsion of a partner who becomes a non-resident.</p> <p>.2 Purpose and term of the partnership:</p> <p>(a) What type of partnership is it? What is its purpose?</p> <p>(b) What term is appropriate, and how is the partnership to be terminated?</p>					

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<p>(c) Advise that the Supreme Court of Canada has clarified that for tax (and other) purposes, a partnership must meet the fundamental criteria that a partnership is “the relation which subsists between persons carrying on business in common with a view of profit” (<i>Partnership Act</i>, s. 2).</p> <p>.3 Management of the partnership and the role of the partners, bearing in mind the implications if a limited partner takes part, or is deemed to have taken part, in the management of the business:</p> <p>(a) In general, what role is each partner or each type of partner (general and limited) to play?</p> <p>(b) Who has banking authority, who is responsible for day-to-day management, and how are major decisions made?</p> <p>(c) If a partner is a corporation or other legal person, how will it be represented, and what will be the effect of various circumstances such as the death of the representative?</p> <p>(d) Is it intended that all general or limited liability partners be and remain actively involved in management? If the client is going to be a general or limited liability partner and is not going to be actively involved, advise the client to keep informed of the partnership’s financial affairs. Consider whether it is desirable that the client be a signing officer.</p> <p>(e) Is the client going to be an employee of the partnership? If so, consider the need for a separate employment contract (possibly tied to the partnership agreement) or for employment clauses in the agreement. If the client is to be a limited partner, ensure that they are not giving services as part of their contribution (s. 55).</p> <p>(f) Is competition or conflict of interest to be permitted and, if so, to what extent and by what procedure? Stress the accountability provisions (ss. 32 and 33). Even if provision is made in the partnership agreement, advise that it may still be desirable to disclose and obtain clear consent regarding particular conflict situations.</p> <p>(g) Should there be any restrictive covenants, including non-competition covenants and non-solicitation covenants (which require careful drafting in order to be enforceable)?</p> <p>(h) Ensure that nothing in the agreement (e.g., restriction of the powers of the general partners) constitutes participation by the limited partners in management (s. 64).</p> <p>.4 Financing:</p> <p>(a) In general, how much money is needed for the proposed venture, for what purposes is it to be spent (on what, how much, when), how is the partnership to be financed, how will partners put money into the partnership and on what terms, how will the capital accounts of each partner be monitored, and how will partners get their money out?</p> <p>(b) If the client has not already done so, advise the client to discuss financing issues with a financial advisor (e.g., the prospective accountant, auditor, or bank).</p> <p>(c) Are items such as cars, office furniture, computers, tools and equipment, etc. to be provided by the partnership, or will they be the responsibility of each partner?</p>					

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<p>(d) Consider advising the client to meet with the other parties and draw up a pro forma budget. This might be attached to the partnership agreement as a statement of intention or the partnership agreement may provide for how the partners will approve the budget and any deviations each year.</p> <p>(e) Discuss methods by which partners can get a return from the partnership (e.g., salary, interest on loans, repayment of loans, distributions) and the prohibition of a return of capital to limited partners except as provided (s. 62).</p> <p>(f) Discuss the status and priority of a loan to the partnership by a partner, and explain the special position of a limited partner under s. 60 and a limited liability partner under s. 112.</p> <p>.5 Partnership property:</p> <p>(a) In general, what property is or will be partnership property and what property being dealt with is or will be separate property?</p> <p>(b) Discuss whether any property will be assigned to the partnership by the partners at the time of formation, and consider whether any additional documentation such as an assignment of property is required.</p> <p>(c) What is the nature of the interest of each partner in the partnership and its assets (e.g., whether, in the case of a general or limited liability partnership, the interest of each partner consists merely of contractual rights, or if it represents an undivided interest in the assets of the partnership)? The entitlement of limited partners is limited generally to their contribution plus any profits; they do not have any “independent” ownership rights in the property of the limited partnership.</p> <p>.6 Restrictions on any transfer of interest. In general, whether there will be any restrictions (such as rights of first refusal, shotgun provisions, piggy-back or drag-along rights) and, if so, in what circumstances and why such restriction is needed.</p> <p>.7 Consequences of certain types of events:</p> <p>(a) In general, discuss various types of events that might occur, and the desired consequences. Determine whether the consequences are to be optional or mandatory. Events to be considered should include death, termination of employment, a partner’s desire to sell the partner’s interest in the partnership, retirement, incapacity, bankruptcy, insolvency, default under the partnership agreement or an employment contract, change in control of a corporate partner, or a partner ceasing to be resident in Canada for the purposes of the <i>Income Tax Act</i>, etc.</p> <p>(b) Ensure that you have covered any circumstances in which a partner can force the other partners to buy that partner out, and circumstances in which other partners can force a partner to sell.</p> <p>.8 Where a sale to the partnership or the other partners is contemplated:</p> <p>(a) Is the sale to the partnership, the partners, or both? If it is to both, how is this to be handled (e.g., priority, procedures, timing)?</p> <p>(b) How is the purchase to be paid and funded?</p> <p>.9 Valuation (of interest, of purchase price in various circumstances, etc.):</p>					



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<p>(a) Values or methods for calculating the values should be set out in the partnership agreement and should be practical, reasonable, and certain.</p> <p>(b) Advise the client to consult a financial advisor as to the most appropriate valuation methods.</p> <p>.10 Mechanisms for dispute resolution (e.g., a shotgun or compulsory purchase clause, dissolution of the partnership, arbitration).</p> <p>Note the first Protocol of Amendment to the New West Partnership Trade Agreement (the “NWPTA”), signed January 6, 2015, which clarified labour mobility language and dispute resolution provisions. See also “<i>Arbitration Act</i>” under “New developments” in this checklist.</p> <p>2.12 Advise regarding the tax consequences of the partnership and the proposed provisions, including the treatment of partners under the <i>Income Tax Act</i>, and the responsibility of the partnership to collect and remit PST/GST, or advise the client to get specialized tax advice (particularly with respect to provisions dealing with purchase of the interest of a deceased partner).</p> <p><b>Note:</b> Both PST and GST are generally applicable to legal services. Further information about the GST and PST can be found at <a href="http://www.canada.ca/en/services/taxes.html">www.canada.ca/en/services/taxes.html</a> and <a href="http://www2.gov.bc.ca">www2.gov.bc.ca</a>.</p> <p>2.13 Ensure that the proposed provisions are workable and reasonable in the circumstances.</p> <p>2.14 In the case of a limited partnership, stress that:</p> <p>.1 No action should be taken before the certificate is filed, as the limited partnership does not exist until that time and persons carrying on business before the filing may be liable as general partners.</p> <p>.2 The limited liability of a limited partner may be lost, for example where:</p> <p>(a) That partner was or became aware of a false statement in the certificate filed pursuant to s. 51 of the <i>Partnership Act</i> (s. 74).</p> <p>(b) That partner’s name appears in the firm name, contrary to s. 53 of the <i>Partnership Act</i>.</p> <p>(c) That partner takes part in the management of the business (s. 64).</p> <p>(d) That partner’s, or the partnership’s, liability is governed by the law of another jurisdiction that does not recognize the limitation of a partner’s liability.</p> <p>2.15 In the case of a limited liability partnership, advise that a partnership does not become a limited liability partnership until the registration statement is filed (s. 96).</p> <p>2.16 Discuss whether the partnership will carry on business in any other jurisdictions and should be extraprovincially registered. Note that in the case of general partnerships, registration as an extraprovincial partnership is not available, and the partnership legislation of the applicable province(s) should be consulted for any registration requirements. With respect to limited partnerships and limited liability partnerships, the NWPTA eliminates certain duplicative reporting requirements for extraprovincial registration in Alberta, Saskatchewan, and, as of January 1, 2020, Manitoba. See “Manitoba Joins NWPTA” and “MRAS” under “New developments” in this checklist.</p>					

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<p>2.17 Discuss the provisions of the <i>Securities Act</i>, R.S.B.C. 1996, c. 418, if applicable. Advise that, generally, a person is prohibited from trading in a security when such trade would be in the course of a distribution to the public. If partnership interests are distributed to persons in another jurisdiction, the securities laws of that jurisdiction must also be considered.</p> <p>2.18 Discuss the possible use of a management company. Discuss the implications and risks for limited liability where a limited partner (or director or officer of a corporate limited partner) acts as a director or officer of the management company or of a general partner. Emphasize, at a minimum, that the person should be careful to separate any such positions from their status as a limited partner.</p> <p>2.19 Where the client has not already done so, advise the client to discuss the various issues with the other parties and reach a satisfactory solution that will ensure continuing fairness to all parties, and then inform you of the results.</p> <p>2.20 Get instructions to proceed with drafting the partnership agreement and any other agreements required, including an employment contract or an assignment of property to the partnership, if appropriate.</p> <p>2.21 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 resource available 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>).</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.</p> <p>3.2 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>3.3 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. Communicate with counsel representing the other parties that you are acting for your client. If other parties are unrepresented, urge them in writing to get independent legal representation. As noted in item 2.2, make it clear to the other parties 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>3.4 Conduct any relevant searches, such as:</p> <ul style="list-style-type: none"> <li>.1 Company searches of all corporate parties.</li> <li>.2 Name search and firm name reservation with the Corporate Registry (s. 89).</li> <li>.3 Registrations under the <i>Personal Property Security Act</i>, R.S.B.C. 1996, c. 359.</li> <li>.4 Land title office.</li> </ul> <p>3.5 Consider legislation in other relevant jurisdictions (e.g., where the partnership intends to carry on business or to sell interests), in particular whether the limited liability of the limited partners will be effective in such jurisdictions.</p>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p>3.6 Open a document file and retain successive drafts of the agreement. Open a separate sub-file for each major document required in the matter.</p> <p><b>4. DRAFTING THE AGREEMENT</b></p> <p>4.1 Prepare an outline of the agreement, indicating the clauses from your precedent file that will be included (see the PARTNERSHIP AGREEMENT DRAFTING (B-9) checklist). Also prepare an outline of any other documents required, such as a <i>Partnership Act</i>, s. 81 registration statement, a s. 96 registration statement, a s. 51 certificate, an employment contract, or an assignment of property to the partnership.</p> <p>4.2 Prepare the first draft.</p> <p>4.3 Review the first draft, checking each segment to ensure that it achieves the client’s objectives, and checking the document as a whole to ensure that it is internally consistent. Make any necessary corrections and prepare the second draft.</p> <p>4.4 Go over the second draft with the client, or send it to the client with a request that that client review it and note any changes or questions. Discuss changes or questions.</p> <p>4.5 Make any changes required to the second draft, and send copies to the other parties or their lawyers for comment. Review any alterations with the client.</p> <p>4.6 Prepare the final documents. Ensure compliance with the requirements of <i>Partnership Act</i>, s. 81, s. 96, or s. 51, as appropriate.</p> <p>4.7 Arrange for signing and execution of:</p> <ul style="list-style-type: none"> <li>.1 Partnership agreement.</li> <li>.2 General partnership registration statement (s. 81), if applicable.</li> <li>.3 Limited partnership certificate (s. 51) (caution regarding the effect of knowledge of any false statement therein), if applicable.</li> <li>.4 Limited liability partnership registration statement (s. 96), if applicable.</li> <li>.5 Employment contracts.</li> <li>.6 Assignment(s) of property.</li> </ul> <p><b>5. CLOSING THE FILE</b></p> <p>5.1 File documents:</p> <ul style="list-style-type: none"> <li>.1 File s. 81 registration statement with the registrar within three months after formation of the firm (s. 82), accompanied by the prescribed fee (s. 93). Note that electronic filing of the registration statement is now permitted.</li> <li>.2 File s. 51 certificate for a limited partnership with the registrar immediately, accompanied by the prescribed fee (s. 93), and notify the client as soon as this is done.</li> <li>.3 File s. 96 registration statement for a limited liability partnership immediately, accompanied by the prescribed fee (s. 93).</li> </ul> <p>5.2 Complete any assignments of property to the partnership, as well as any necessary registrations.</p>					

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<p>5.3 Prepare a reporting letter and account as soon as practicable after closing. Where a partnership was registered as a limited liability partnership, advise the client to take reasonable steps to notify all of its existing clients in writing that the partnership was registered as a limited liability partnership and of the changes to the liability of the partners as a consequence of such registration (s. 107). Advise that changes in circumstances, legislation (e.g., tax law), insurance requirements, etc. make it essential that the agreement be reviewed from time to time. Ascertain whether the client wishes to meet for this purpose from time to time and, if so, make entries in your diary and “BF” systems.</p> <p>5.4 Close the file. See the CLIENT FILE OPENING AND CLOSING (A-2) checklist.</p>					