

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) checklist and CLIENT FILE OPENING AND CLOSING (A-2) checklist. It is intended for use as a guide to incorporation of companies under the British Columbia <i>Business Corporations Act</i>, S.B.C. 2002, c. 57 (the “BCA”). The 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</i>, R.S.C. 1985, c. 28 (1st Supp.).</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)</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 (“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).</li> <li>• <b>Revocability of a shotgun offer.</b> In <i>Blackmore Management Inc. v. Carmanah Management Corp.</i>, 2022 BCCA 117, supplementary reasons 2022 BCCA 235 the court applied the principles of contractual interpretation to a shotgun clause in a shareholders’ agreement. The court reversed the trial decision and held that an offer made under a shotgun clause will not be irrevocable in the absence of express language in the agreement to the contrary. Revocability is an important consideration in the drafting of shotgun clauses. These clauses are typically included in shareholders’ agreements to provide the parties with a dispute resolution mechanism that will result in one shareholder selling its shares to the other shareholder at a price that is determined under a construct that promotes fairness. This is achieved by the triggering party making two offers: one offer to buy the shares of the other shareholder at a specified price, and a second offer to</li> </ul>					

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<p>sell the triggering party’s shares to the other shareholder at the same price per share. To achieve the intended result of a shotgun mechanism, typically the offer must be irrevocable. Consistent with this notion, the court concluded that it would be inconsistent with the purpose of shotgun clauses if parties could revoke an offer they have come to regret. As a result of this decision, in the atypical situation where the parties intend for a shotgun offer to be revocable, this intention should be expressly set out in the agreement. In all other circumstances, it is best practice to expressly state that the offer is irrevocable. Note that the Court of Appeal granted a stay of its order pending an application for leave to the Supreme Court of Canada; counsel should stay apprised of further updates.</p> <ul style="list-style-type: none"> <li>• <b>Arbitration Act.</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>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>.</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> (providing that 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> </ul>					

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<ul style="list-style-type: none"> <li> <p><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. Accordingly, 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, amendments to the <i>CBCA</i> 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 require inclusion in the register.</p> </li> <li> <p><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”). Extra-provincial registration (or cancellation thereof) under the NWPTA is no longer made through the home jurisdiction; it must now be made through each extra-provincial jurisdiction. For instance, prior to June 29, 2020, when a British Columbia company wanted to be extra-provincially registered in Alberta, the filing was made through BC Online. Now, the extra-provincial filing must be made through the Alberta Corporate Registry.</p> </li> <li> <p><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>.</p> </li> </ul> <p><b>Of note:</b></p> <ul style="list-style-type: none"> <li> <p><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</p> </li> </ul>					

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<p>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).</p> <ul style="list-style-type: none"> <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>. 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>Bencher’s Bulletin</i>, Spring 2021); 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>”.</li> <li>• <b>COVID-19 pandemic.</b> Counsel should keep apprised of developments related to COVID-19 (and response measures) that may affect their clients’ businesses or 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 <a href="https://ltsa.ca/covid-19-resources/">https://ltsa.ca/covid-19-resources/</a>.</li> <li>○ Counsel conducting due diligence searches will need to be mindful of the impact of the COVID-19 pandemic. 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>Tax alert.</b> As some aspects of a shareholders’ or partnership agreement may have significant tax implications for the parties, it is recommended the parties seek advice from their respective tax advisors.</li> </ul>					

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<p>• <b>Additional resources.</b> For detailed information about incorporation procedures, see <i>British Columbia Company Law Practice Manual</i>, 2nd ed. (CLEBC, 2003–); <i>Company Law Deskbook</i> (CLEBC, 2006–); and <i>Advising British Columbia Businesses</i> (CLEBC, 2006–).</p> <p>• <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).</p> <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. Proceedings by Incorporators</li> <li>5. Preparation for First Meeting of Directors</li> <li>6. Preparation for First Meeting of New Shareholders</li> <li>7. Execution of Documents</li> <li>8. File in Records Office (Minute Book)</li> <li>9. Miscellaneous Steps</li> <li>10. Closing the File</li> </ol> <p style="text-align: center;"><b>CHECKLIST</b></p> <p><b>1. INITIAL CONTACT</b></p> <ol style="list-style-type: none"> <li>1.1 Arrange the initial interview and ask client to bring any relevant documents.</li> <li>1.2 Conduct a conflicts of interest check and refer to the CLIENT FILE OPENING AND CLOSING (A-2) checklist.</li> <li>1.3 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).</li> <li>1.4 Know your client and understand the purpose of the incorporation. Understand the client’s financial dealings in relation to the retainer and manage any risks arising from your professional business relationship. Criminals sometimes use corporations and trusts to facilitate complex money laundering schemes. Consult the LAW SOCIETY NOTABLE UPDATES LIST (A-3) for resources to assist you in combatting money laundering, and in particular, note the risk advisory for shell corporations and case studies with respect to the creation and management of trusts and companies. Consider <i>Code of Professional Conduct for British Columbia</i> (the “BC Code”), rules 3.2-7 to 3.2-8 and their commentaries and Law Society Rules 3-109 and 3-110. See “Money laundering—companies, trusts and other entities” in the “Of note” section of this checklist.</li> </ol> <p><b>2. INITIAL INTERVIEW</b></p> <ol style="list-style-type: none"> <li>2.1 Determine for whom you will act (for example, the company or one or all of the shareholders).</li> </ol>					

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<p>.1 If acting for more than one party, ensure that you comply with <i>BC Code</i> 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. Explain what these requirements mean and that it may be necessary for clients (as shareholders) to seek independent legal advice during the course of the incorporation (for example, with respect to shareholders' agreements or financing arrangements). If applicable, 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 Confirm that you will act for certain client(s) and, in the case of a corporate client, confirm who is authorized to give you instructions (<i>BC Code</i>, rule 3.2-3, Commentary [1]). Consider a directors' resolution authorizing a certain person to give you instructions.</p> <p>.3 Be aware of the obligations in the <i>BC Code</i> with respect to competence and communications (see <i>BC Code</i> rules 3.1-2, 7.2-6, 7.2-6.1, 7.2-8, and 7.2-9).</p> <p>2.2 Discuss and confirm the terms of your retainer and the calculation of your fee. Refer to the CLIENT FILE OPENING AND CLOSING (A-2) checklist.</p> <p>2.3 Determine what your clients wish to accomplish by incorporation. Will incorporation meet their goals or is another business structure better suited?</p> <p>.1 See chapter 1 (Initial Considerations in Advising a Business) of <i>Advising British Columbia Businesses</i> (CLEBC, 2006–) for a more detailed discussion of considerations regarding the appropriate business structure for your clients. Consider matters such as:</p> <p>.2 Ownership of the equity of the proposed company both immediately at incorporation and in the near-term following incorporation.</p> <p>.3 Control of the voting rights of the proposed company.</p> <p>.4 Who the directors responsible for overseeing management and the officers in charge of day-to-day operations and the employees will be.</p> <p>.5 Financing of the business through debt and equity financing options.</p> <p>.6 Whether the business is likely to expand, and, if so, whether clients are planning to offer further shares to investors at a later date. If so, explain securities law requirements and possible exemptions or consult with a securities lawyer.</p> <p>.7 Whether any existing business will be taken over by the proposed company. If so, what is the nature of that business, who operates it, who are the persons interested in it, and what is the nature and extent of their interest?</p> <p>.8 If the business already exists, what legal structure is being used to operate the business?</p> <p>.9 What assets and liabilities will be acquired by the proposed company; how will they be paid for? (a) Is there potential tax liability for the transferor of assets to the company? Consult with an accountant or tax lawyer to determine whether a tax deferred rollover is available.</p> <p>.10 How successful will the business be at the time of incorporating the proposed company?</p>					

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<p>(a) If the business is a start-up, will the client want to write-off the start-up costs against income earned from other sources?</p> <p>.11 Will employees be allowed to participate in earnings or equity?</p> <p>(a) If stock options or other securities are contemplated, then explain securities law requirements or consult with a securities lawyer.</p> <p>.12 What are the personal financial plans of each client and the personal tax planning objectives and positions of each? If necessary, liaise with the client’s tax and financial advisors to determine how best to meet the client’s tax and estate planning objectives.</p> <p>.13 Whether incorporation in the form and for the purposes envisioned by the clients will violate any laws (for example, legislation concerning foreign ownership or incorporation of certain types of businesses or professions, restrictive covenants, fraudulent preferences or conveyances). Make sufficient enquiries to ensure that you are not facilitating incorporation of a company for an improper purpose (<i>BC Code</i> rules 3.2-7 to 3.2-8 and Law Society Rules 3-109 and 3-110).</p> <p>.14 Whether the company needs a GST, PST, or WorkSafeBC registration; consider directing your client to the website (<a href="http://www.bcregistry.gov.bc.ca">www.bcregistry.gov.bc.ca</a>) for registrations with various public agencies. Further information about GST and PST is available at <a href="https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/gst-hst-businesses.html">https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/gst-hst-businesses.html</a> and <a href="http://www2.gov.bc.ca">www2.gov.bc.ca</a>, respectively. Consider referring the client to an accountant for further discussion regarding tax and related compliance matters.</p> <p>2.4 Discuss the effect of incorporation, including:</p> <p>.1 the separate legal existence of a company, the distinction between the position and authority of directors and shareholders;</p> <p>.2 broadly explaining that different income tax rules will apply to the company and shareholders and recommending the client obtains accounting and tax advice from an accountant; and</p> <p>.3 ongoing filing and administrative requirements to keep the company in good standing.</p> <p>2.5 If the decision is made to incorporate, advise the clients of the advantages and disadvantages of incorporating a company under provincial law (<i>BCA</i>), under federal law (<i>Canada Business Corporations Act</i>, R.S.C. 1985, c. C-44), or under the laws of another province (if you are qualified to give such advice).</p> <p>.1 Determine under which regime the clients wish to incorporate.</p> <p>.2 Consider whether the company will carry on business in more than one province, or, if a federal company, whether it will carry on business in British Columbia and will need to make any extra-provincial registrations where business is carried on.</p> <p>.3 Consider consulting agents in other jurisdictions to determine extra-provincial registration requirements, as these requirements could affect the share structure.</p>					

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<p>.4 Consider whether an unlimited liability corporation (“ULC”) would be appropriate. See Part 2.1 of the <i>BCA</i> for further information about the incorporation and legislative regulation of ULCs in British Columbia. This corporate structure is of primary benefit to American investors in Canada, as it offers certain tax benefits in the United States.</p> <p>.5 Part 2.2 of the <i>BCA</i> concerns the incorporation and legislative regulation of community contribution companies (“C3s”). A C3 is limited in its ability to distribute profits but may distribute profits for community purposes.</p> <p>.6 Part 2.3 of the <i>BCA</i> concerns the incorporation and legislative regulation of benefit companies. A benefit company is a for-profit company which conducts business in a sustainable and responsible manner, while promoting one or more public benefits. See “Benefit companies” in the “New developments” section of this checklist.</p> <p>.7 Explain the transparency register requirements in British Columbia, and compare those requirements with any equivalent provisions in other jurisdictions. See “Transparency register” in the “New developments” section of this checklist.</p> <p><b>Note:</b> The balance of this checklist deals with incorporation of a company (excluding ULCs, C3s, and benefit companies) under the <i>BCA</i>. While some of this information is also applicable to the incorporation of a ULC, C3, or a benefit company, specific requirements relating to ULCs, C3s, and benefit companies are set out in Parts 2.1, 2.2, and 2.3 of the <i>BCA</i>.</p> <p>2.6 Discuss and decide on the contents of the incorporation agreement, incorporation application, and notice of articles. Matters to consider include:</p> <p>.1 Proposed name of the company and alternative choices (check precise spelling, punctuation, and capitalization, and see <i>BCA</i>, ss. 21 to 29).</p> <p>(a) You may submit to the Registrar of Companies up to three choices for a name at one time, and doing so could save the client’s time and money if the first choice is not available.</p> <p>(b) A company name must have a distinctive element, a descriptive element, and a corporate designation (e.g., ABC Manufacturing Limited).</p> <p>(c) Consider doing an informal preliminary name check.</p> <p>(d) Find out whether the clients want trademark searches, and/or name searches for extra-provincial registration in other provinces.</p> <p>(e) Consider whether the NWPTA applies. See “Manitoba joins NWPTA” and “MRAS” under “New developments” in this checklist.</p> <p>(f) Find out whether the company name will be used in connection with providing goods and services to the public and whether trademark registration of a name or design is desired. Advise the client that name clearance by the Corporate Registry under the <i>BCA</i> does not protect the client against possible claims for infringement of trade names registered to another party under the <i>Trademarks Act</i>, R.S.C. 1985, c. T-13, or against common law passing-off actions. If there is any possibility of the company conducting business in more than one jurisdiction, consider a cross-country name search.</p>					



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<p>.2 Any translation of the company’s name that the company intends to use outside Canada (see <i>BCA</i>, s. 25). Note that a company name must be in French, English, or both languages, and accordingly if the client anticipates that it will do business in Quebec or other French-speaking regions, then it may be advantageous to incorporate under a name in both languages (although this can also occur later through a corporate name change to add the desired French name).</p> <p>.3 Authorized share structure (see <i>BCA</i>, ss. 52, 53, 59, and 60). If the clients have retained accountants, consult with them. Consider:</p> <p>(a) Any reason for having shares of more than one class.</p> <p>(b) Purposes for the different classes of shares.</p> <p>(c) Special rights or restrictions to be attached to classes of shares (including voting control, dividends and distribution of profits, purchase or redemption of shares, distribution of property in a wind-up, and conversion rights) and whether the use of certain share rights and restrictions will affect the valuation of the shares for income tax purposes.</p> <p>(d) Whether special rights or restrictions should provide that shares may be issued in one or more series.</p> <p>(e) In consultation with accountants, whether shares should be with or without par value (and, if with par value, whether there is any reason for par value to be in a foreign currency).</p> <p>(f) Number of shares needed immediately.</p> <p>(g) Number of shares likely to be needed in the future.</p> <p>(h) Any reason for limits on the number of shares the company is authorized to issue.</p> <p>(i) Whether the company will be registered in other jurisdictions having a tax or fee dependent on the number of shares authorized.</p> <p>.4 The location of the company’s records and registered offices.</p> <p>(a) Obtain full street address or other sufficient description of location in British Columbia (refer to the <i>BCA</i>, ss. 34, 42 to 46, and 48.)</p> <p>(b) Advise that it is the primary responsibility of the company to maintain the records at the records office (<i>BCA</i>, s. 44(4)) and that such address must be open for inspection of certain records during certain business hours. Make certain that both you and your clients are aware of the responsibilities associated with acting as records or registered office. Consider providing clients with a list of documents required to be kept at the records office.</p> <p>(c) If your office will be the records or registered office, prepare a records office agreement that sets out the responsibilities of both the company and your office and contains appropriate termination and indemnification provisions. Advise the client of services and fees involved in appointing your office as records office agent and of s. 9 of the <i>BCA</i>, regarding service.</p> <p>.5 Directors.</p> <p>(a) Ensure that the number of directors is correct (at least one for a B.C. or federally-incorporated private company and at least three for a public company (<i>BCA</i>, ss. 51.93 and 120)).</p> <p>(b) Check that the directors have the necessary qualifications (<i>BCA</i>, ss. 124 and 125).</p>					

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<p>(c) Confirm compliance with other applicable statutes regarding qualifications (e.g., <i>Legal Profession Act</i>, S.B.C. 1998, c. 9, s. 82(1)(e) requires the directors and president of a law corporation to be practising lawyers in good standing).</p> <p>(d) Obtain the full name and the “prescribed” address of each director. The prescribed address is, at the individual’s option, either the delivery address (and, if different, the mailing address) at which the director can usually be served with documents from 9:00 a.m. to 4:00 p.m. (local time), except for Saturdays, Sundays, and holidays, or the delivery address (and, if different, the mailing address) of the director’s residence; see Business Corporations Regulation, B.C. Reg. 65/2004 (the “BCA Regulation”), s. 2.</p> <p>(e) Obtain written consents to act as directors (recommended even if a meeting to elect them will be held at which they will be present (<i>BCA</i>, ss. 121(2), 122(4), and 123)). The written consents should contain a list of statutory qualifications.</p> <p>(f) Explain that fiduciary and statutory obligations apply to all directors (see items 2.10 and 2.11 of this checklist).</p> <p>2.7 Determine the contents of the articles (see <i>BCA</i>, s. 12).</p> <p>.1 Consider whether there should be any business or power restrictions (generally not recommended unless required by specific legislation).</p> <p>.2 Consider the matters that may be included in the articles set out in chapter 4 (Incorporation and Organization) of <i>British Columbia Company Law Practice Manual</i>, 2nd ed. (CLEBC, 2003–).</p> <p>.3 If using Table 1 articles (see <i>BCA</i>, s. 12(4); <i>BCA Regulation</i>, s. 42, Table 1) or some other standard articles, check for the applicability of, or if changes are required for, matters such as provision that a quorum for general meetings is two persons, the general rule that transferees are entitled to registration of share transfers, rules relating to notice and conduct of general and class meetings, provision that class and series meetings are called and conducted according to the same rules as general meetings, rules relating to election, appointment, or removal of directors, provision that a proxy holder can only vote on a poll and not on a show of hands, and terms for evidence and indemnity for lost share certificates.</p> <p>.4 Ensure that the company’s articles provide that, if the company is or becomes a “private issuer”, transfer of shares of the company will be restricted.</p> <p>If drafting or tailoring articles, matters to consider include the following:</p> <p>.5 What majority of votes is required for the company to pass a special resolution at a shareholders’ meeting (called a “special majority”) or for a company to pass a special separate resolution of a class or series?</p> <p>.6 Should there be pre-emptive rights on the issue of shares?</p> <p>.7 Should repurchases or redemptions of shares, or both, be pro rata?</p> <p>.8 Determine the type of resolution to use in order to carry out certain corporate acts.</p> <p>(a) Options include a director’s resolution (except where the <i>BCA</i> expressly requires a shareholders’ resolution) and several types of shareholders’ resolutions (namely, an ordinary resolution, a special resolution, a resolution with a higher majority than a special majority (an “exceptional resolution”), and a unanimous resolution).</p>					

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<p>(b) Acts requiring resolutions include alterations to the notice of articles (to the authorized share structure and company name) and alterations to the articles (including creating, varying and deleting special rights and restrictions attached to shares).</p> <p>.9 Provide, if appropriate, for one or more locations for general meetings to be held outside British Columbia or for a resolution to approve a location for a general meeting outside British Columbia.</p> <p>.10 Specify methods of giving notice (for example, notices of meetings); unless the articles otherwise provide, notices both to shareholders and to directors can be given by mail, fax, or email.</p> <p>.11 Consider whether restrictions should be placed on the form of meetings. The <i>BCA</i> permits meetings of shareholders and directors to be held not only in person but also through electronic (virtual) meetings.</p> <p>.12 Consider whether the directors should be empowered to set the remuneration of the auditor, reducing the number of matters to be dealt with at annual general meetings and in annual consent resolutions.</p> <p>.13 Consider whether the articles should provide for the transfer of the powers of the directors to other persons (typically the shareholders).</p> <p>.14 Consider whether to include a shareholder’s right to demand a share certificate for shares issued as uncertificated shares.</p> <p>.15 Consider whether to include a casting vote with respect to director meetings.</p> <p>2.8 Determine who the incorporators will be (individuals or corporations), including full names and the number of voting shares they will subscribe for.</p> <p>2.9 Determine how the company is to be controlled. Will all of the shareholders be involved in management? Can control be effectively exercised with provisions in the articles or is a shareholders’ agreement required? If a shareholders’ agreement is recommended, discuss and settle details with clients. (See the <i>SHAREHOLDERS’ AGREEMENT PROCEDURE (B-6)</i> checklist and <i>SHAREHOLDERS’ AGREEMENT DRAFTING (B-7)</i> checklist.)</p> <p>2.10 Advise the clients of rules pertaining to officers and directors, such as the duty of care, duty to comply with the <i>BCA</i>, notice of articles and articles, disclosable interests in a contract or transaction with the company, and accountability for such contracts or transactions (<i>BCA</i>, ss. 136 to 158, especially ss. 142, 147, 154, and 158).</p> <p>2.11 Discuss potential personal liabilities, such as liabilities of directors under <i>BCA</i>, ss. 154 to 158, and under various statutes: <i>Income Tax Act (Canada)</i>, R.S.C. 1985, c. 1 (5th Supp.); <i>Canada Pension Plan</i>, R.S.C. 1985, c. C-8; <i>Employment Insurance Act</i>, S.C. 1996, c. 23; <i>Bankruptcy and Insolvency Act (Canada)</i>, R.S.C. 1985, c. B-3; <i>Workers Compensation Act</i>, R.S.B.C. 2019, c. 1; and under other legislation concerning environmental, securities, and consumer protection matters.</p> <p>2.12 Decide on the number of shares to be issued in each class, both initially (to the incorporators) and ultimately (to complete initial organization).</p> <p>.1 Decide whether the shares will be certificated or uncertificated (<i>BCA</i>, s. 107). If the incorporators will be immediately disposing of their shares, consider issuing uncertificated shares to the incorporators.</p>					

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<p>.2 Decide on the issue price for the shares. Ensure that statutory requirements for issuance will be met (<i>BCA</i>, ss. 62 to 65). Ensure that directors satisfy themselves that the aggregate value of past services, property, and money equals or exceeds the issue price and that such value does not exceed fair market value. Communicate that shares cannot be issued to a shareholder for future consideration from that shareholder.</p> <p>Note: If the shares have a par value, the shares must be issued for at least the amount of the par value; the shares can be issued for an amount greater than the par value, but not less.</p> <p>.3 Ensure that any other statutory requirements are met (e.g., <i>Legal Profession Act</i>, s. 82(1)(c) requires that only law corporations or practising lawyer in good standing of the Law Society may hold voting shares in a law corporation; professional companies under the <i>Health Professions Act</i>, R.S.B.C. 1996, c. 183 are subject to similar requirements).</p> <p>.4 Ensure that securities law requirements are met or that exemptions exist for the issuance of all shares.</p> <p>2.13 Determine whether the company will have a seal (<i>BCA</i>, s. 27(2)). Advise clients that a seal is not required under the <i>BCA</i>, but it may be required by banks and lending institutions. If the company will have a seal, determine who may affix it.</p> <p>2.14 Obtain the name, branch, and address of the company’s bank. Determine who will be the authorized signing officers.</p> <p>2.15 Determine whether the company will have an auditor, noting that all shareholders must agree to a waiver of auditor and such waiver is effective for one financial year only. If the company is to have an auditor, obtain the name and address of both the firm and the individual responsible. (Refer to the <i>BCA</i>, Part 7, especially s. 204.)</p> <p>2.16 Obtain particulars of additional financial matters, including property to be purchased or leased, the intended financial year-end, borrowing details including securities, notes, debentures, and so on. Discuss income tax planning, including tax elections that may be made upon acquisition of assets.</p> <p>2.17 Check whether clients entered into any pre-incorporation contracts and, if so, whether they should be adopted under s. 20 of the <i>BCA</i>.</p> <p>2.18 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 and your instructions; see item 2.1 in this checklist regarding potential conflicts of interest, and refer to the CLIENT FILE OPENING AND CLOSING (A-2) checklist. In the case of a corporate client, confirm who is authorized to give you instructions. Check that you have a follow-up system to ensure that the clients return a signed copy of the retainer letter to you. Confirm compliance with the Law Society Rules on client identification and verification (see item 1.3 in this checklist).</p>					

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<p>3.2 Conduct a name search in all available sources, including telephone directories and registers of partnership names. Consider a NUANS pre-search. Conduct a name search with the Corporate Registry and, if the name is available, reserve it for period of 56 days (<i>BCA</i>, s. 22(2)). The name may be reserved for any period longer than 56 days that the Registrar of Companies considers appropriate, and the registrar has the discretion to extend that period (<i>BCA</i>, s. 22(2) and (3)). If the company intends to operate extra-provincially, make certain that the name is available in the other jurisdictions. Conduct trademark searches, if desired.</p> <p>3.3 Prepare a draft of the incorporation agreement (see <i>BCA</i>, s. 10(2) for requirements), incorporation application (<i>BCA</i>, s. 10(3)), notice of articles (<i>BCA</i>, s. 11), and articles (<i>BCA</i>, s. 12).</p> <p>3.4 If required, prepare a draft shareholders’ agreement.</p> <p>3.5 Check that the draft incorporation agreement, incorporation application, notice of articles, articles, and shareholders’ agreement are in harmony and that a provision in one does not contradict what is attempted in another. If appropriate, write a letter to the clients explaining the effect of the draft incorporation agreement, incorporation application, notice of articles, articles, and shareholders’ agreement. When the clients have confirmed that these drafts are acceptable, prepare the final form of incorporation agreement, incorporation application, notice of articles, articles, and shareholders’ agreement.</p> <p>3.6 Arrange a meeting with the client(s) to sign the incorporation agreement and articles; alternatively, arrange for signing remotely and return of the documents to your office. If the incorporator is the law firm, a company incorporated by the law firm for the purpose of acting as incorporator, or an employee of the firm, arrange for the incorporation agreement and articles to be signed.</p> <p>3.7 File the incorporation application electronically with the Corporate Registry (with the notice of articles) and pay the required incorporation fee.</p> <p>3.8 Obtain the certificate of incorporation and advise the client of its receipt.</p>					
<p><b>4. PROCEEDINGS BY INCORPORATORS</b></p>					
<p>4.1 Obtain written consents from the persons who will be the first directors (<i>BCA</i>, s. 123).</p>					
<p>4.2 Obtain written confirmation of payment for incorporators’ shares (<i>BCA</i>, s. 64), even if the law firm or one of its employees is the incorporator.</p>					
<p>4.3 If no auditor is to be appointed, prepare a waiver for the current financial year and have it executed by all incorporators (<i>BCA</i>, s. 203). Consider whether this waiver should be given by the permanent shareholders rather than the incorporators.</p>					
<p>4.4 Prepare a resolution of incorporators setting the inspection hours for the records office (<i>BCA</i>, s. 46(8) and <i>BCA</i> Regulation, s. 13; also see the definition of “ordinary resolution” in <i>BCA</i>, s. 1). Consider whether this should be a resolution of the permanent shareholders rather than of the incorporators. Ensure that the clients are aware of requirements regarding examination of records (<i>BCA</i>, s. 46).</p>					
<p><b>5. PREPARATION FOR FIRST MEETING OF DIRECTORS</b></p>					
<p>5.1 Obtain subscriptions for the shares to be issued to permanent shareholders.</p>					

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<p>5.2 Obtain written confirmation of payment for the shares to be issued.</p> <p>5.3 Prepare minutes of directors' meeting or resolutions in writing of all directors (<i>BCA</i>, s. 140(3)) to:</p> <ul style="list-style-type: none"> <li>.1 Issue the incorporators' shares (take care determining the price if the shares are without par value) and authorize the execution and delivery of share certificates, or notices if uncertificated, evidencing the incorporators' shares.</li> <li>.2 Approve the transfers of incorporators' shares to permanent shareholders or, alternatively, the repurchase of incorporators' shares.</li> <li>.3 Issue all shares subscribed for by the permanent shareholders (take care determining the price if the shares are without par value) and authorize the execution and delivery of share certificates evidencing the shares issued (or the issuance of uncertificated shares, as applicable); in doing so, consider how to comply with the conflict of interest rules (see <i>BCA</i>, ss. 147 to 153): <ul style="list-style-type: none"> <li>(a) if not all of the directors will be subscribing for shares, the directors who are not interested should pass the resolution issuing all shares (other than incorporators' shares) to interested directors and others (see <i>BCA</i>, s. 149(2), which prohibits a director with a disclosable interest from voting on the corresponding resolution);</li> <li>(b) if all of the directors will be subscribing for shares, any or all of the interested directors may pass the directors' resolution issuing the shares (see <i>BCA</i>, s. 149(3)), or else prepare a special resolution approving the issue of shares.</li> </ul> </li> <li>.4 Appoint officers (including obtaining any officer consents required), fix the quorum for directors' meetings, fix the financial year-end, appoint the company's bank and adopt a banking resolution, appoint an agent to maintain the records and registered offices and approve a contract with that agent, confirm the location of the accounting records, and appoint an auditor (unless waived).</li> <li>.5 Adopt pre-incorporation contracts (<i>BCA</i>, s. 20), if any.</li> <li>.6 If a meeting is to be held, note requirements for notices, waivers, and quorum. If using resolutions in writing, these must be signed by all directors entitled to vote on the resolution (<i>BCA</i>, s. 140(3)).</li> </ul> <p>5.4 Prepare share certificates for the incorporators' shares and the shares issued to the permanent shareholders (see requirements in <i>BCA</i>, ss. 57, 107, and 110) or written notices, if applicable. Written notices must be sent to the shareholders when shares are not represented by a share certificate (see <i>BCA</i>, s. 107(3)), or when the directors have provided by resolution that shares must be uncertificated (see <i>BCA</i>, s. 107(4) and (6)).</p> <p>5.5 If appropriate, prepare declarations of trust if any shares are being held by a nominee or trustee. Ensure that clients have been given adequate advice with respect to income tax implications, legal difficulties in dealing with shares, and so on, particularly in the case of trusts for minors.</p> <p>5.6 Prepare a resolution to approve a shareholders' agreement (if any).</p> <p>5.7 Advise the clients to ensure that company records are kept in a manner that meets requirements (<i>BCA</i>, s. 44) and that the company and its agents must take adequate precautions with respect to the registers and records.</p> <p>5.8 Attend to such of the following matters as are applicable:</p>					

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<ul style="list-style-type: none"> <li>.1 Extra-provincial registration resolutions and documents.</li> <li>.2 Purchase of assets, resolutions, documents and registrations.</li> <li>.3 Indemnity agreements for directors.</li> <li>.4 Possible insurance for directors or officers or both.</li> <li>.5 Any committees.</li> <li>.6 Set up bank account and execute banking documents.</li> <li>.7 Arrange for the set-up of accounting records and determine location.</li> <li>.8 Settle borrowing requirements and documents.</li> <li>.9 Obtain the relevant information for and list the “significant individuals” in the transparency register (see “Transparency register” under “New developments” in this checklist).</li> </ul>					
<p><b>6. PREPARATION FOR FIRST MEETING OF NEW SHAREHOLDERS</b></p>					
<p>6.1 If no auditor is to be appointed and if the waiver has not already been given by the incorporators, prepare a waiver for the current financial year and have it executed by all shareholders (including those holding non-voting shares) (<i>BCA</i>, s. 203).</p>					
<p>6.2 If not already done by the incorporators, prepare a resolution of permanent shareholders setting inspection hours for the records office (<i>BCA</i>, s. 46(8) and <i>BCA</i> Regulation, s. 13; also see definition of “ordinary resolution” in <i>BCA</i>, s. 1). Ensure that the clients are aware of requirements regarding examination of records (<i>BCA</i>, s. 46). If attending a meeting, watch that requirements as to notice, waiver, quorum, and so on are observed.</p>					
<p>6.3 If necessary, prepare special resolutions of shareholders (see definition of “special resolution” in <i>BCA</i>, s. 1) to approve any contracts or transactions where there are no disinterested directors. If attending a meeting, watch that requirements as to notice, waiver, quorum, and so on are observed.</p>					
<p><b>7. EXECUTION OF DOCUMENTS</b></p>					
<p>7.1 Arrange for the various documents referred to in items 3, 4, 5, and 6 of this checklist to be executed by the appropriate parties.</p>					
<p><b>8. FILE IN RECORDS OFFICE (MINUTE BOOK)</b></p>					
<p>8.1 Keep copies of documents required to be kept at the records office pursuant to the <i>BCA</i>, s. 42 (see chapter 8 (Ordinary Corporate Procedures) of the <i>British Columbia Company Law Practice Manual</i>, 2nd ed. (<i>CLEBC</i>, 2003–)).</p>					
<p>8.2 Carefully comply with the date and time recording requirements in <i>BCA</i>, s. 44(3).</p>					
<p>8.3 Familiarize yourself with the categories of documents that may be inspected under the <i>BCA</i> by: current directors (<i>BCA</i>, s. 46(1)), current shareholders (<i>BCA</i>, s. 46(1) and (3)), former directors (<i>BCA</i>, s. 46(2)), former shareholders (<i>BCA</i>, s. 46(3)), and any person (<i>BCA</i>, s. 46(1), (4), and (5)).</p>					
<p><b>9. MISCELLANEOUS STEPS</b></p>					
<p>9.1 Notice to auditor (if applicable).</p>					

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<p>9.2 If you are retained to maintain the records office of the company, diarize relevant dates. The annual report (<i>BCA</i>, s. 51) contains information as of the anniversary of the date the company was recognized, and must be filed within two months of that anniversary date. The annual general meeting or annual consent resolutions (<i>BCA</i>, s. 182) must be held at least once in each calendar year and within 15 months after the annual reference date, and the first annual general meeting must be held within 18 months of the date the company was recognized (<i>BCA</i>, s. 182(1)(a)).</p> <p>9.3 Advise the clients to ensure that the correct legal name of the company (in addition to optional use of any division or business name) is properly displayed on all documents, forms (including cheques and invoices) and signs (<i>BCA</i>, s. 27).</p> <p>9.4 Consider registering names of operating divisions of the company or other names under which it will carry on business (may be registered under the <i>Partnership Act</i>, R.S.B.C. 1996, c. 348).</p> <p>9.5 Pursue trademark registration of the name, if instructed.</p>					
<p><b>10. CLOSING THE FILE</b></p>					
<p>10.1 Prepare a reporting letter and account as soon as practicable after closing. For tax deductibility, consider providing one account for fees and disbursements relating to incorporation and a separate account for those relating to post-incorporation organization of the company.</p>					
<p>10.2 Close the incorporation file. See the CLIENT FILE OPENING AND CLOSING (A-2) checklist.</p>					
<p>10.3 If you are retained to maintain the records or registered office (or both) of the company, open a separate file for maintaining corporate records. Consider and comply with the Law Society Rules on client identification and verification (see item 1.3 of this checklist), especially if the instructing individual for the company is changing. Refer to the CLIENT FILE OPENING AND CLOSING (A-2) checklist where appropriate.</p>					