### INTRODUCTION

**Purpose and currency of checklist.** This checklist is designed to be used with the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1) and ASSET PURCHASE AGREEMENT DRAFTING (B-2) checklists. It is primarily intended for use by the purchaser’s lawyer, but may be of use as a guide to the vendor’s lawyer. This checklist is current to September 1, 2019.

- **Land Title Office:**
  - **New electronic form templates.** Note the following updates to electronic land title form templates: Form 17 (Fee Simple, V14; Charge, Notation or Filing, V16; Cancellation of Charge, Notation or Filing, V17), Form B (Mortgage, V25), Form C (General Instrument—Release, V25) on November 15, 2019, and Form C (General Instrument—Charge, V25) on November 15, 2019, and Form C (General Instrument—Charge, V25) on The forms are available at ltsa.ca/practice-info/land-title-forms.

- **Law Society Rules:**
  - **Trust accounts and cash transactions.** Lawyers may not move funds into or out of their trust accounts unless the funds are directly related to legal services (see Law Society Rule 1, definition of “trust funds”, and Law Society Rules 3-53, 3-58.1, 3-59, 3-70(1), and 3-98(1)). Lawyers are prohibited from accepting more than $7,500 in cash, which increases the previous amount by one cent for consistency with the updated Federation of Law Societies Model Code (Law Society Rule 3-59). (See exceptions for fees, etc. in connection with the provision of legal services in subrules (2) and (4).) For more information see the July 15, 2019 Notice to the Profession, the Summer 2019 Benchers’ Bulletin, pp. 10 to 14, and the Fall Benchers’ Bulletin, pp. 14 to 17. For trust account questions, contact trustaccounting@lsbc.org or 604.697.5810.
  - **Fiduciary property rules.** The Law Society’s consultation with the profession on proposed changes to Law Society Rule 3-55(6) that would prohibit fiduciary property from being deposited into a trust account when no legal services are provided has concluded. The Benchers are expected to consider the fiduciary property rules in light of Law Society Rule 3-58.1 in 2020.
  - **Client identification and verification.** Changes to the client identification and verification rules take effect on January 1, 2020. The changes introduce more stringent requirements to verify a client’s identity, provide more options for how to confirm a client’s identity, and require lawyers in financial transactions to obtain additional information about a client’s source of money, as well as periodic monitoring and recording of professional business relationships with clients. These changes will affect parts of the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1) checklist current to September 1, 2019.

**Of note:**

- **Fraud prevention.** Lawyers should maintain an awareness of the myriad scams that target lawyers, including the cheque printing scam, the bad cheque scam, fraudulent changes in payment instructions (i.e., through the client’s email or a similar looking email address), and fake law firms and lawyers, and they must be vigilant about the client identification and verification rules, the source of money when there is a financial transaction, and the no-cash rules. Lawyers should be on high alert for fraudulent activity, especially while they are away from the office and during holidays. Lawyers should implement appropriate supervision of
their practice while away. See the “Fraud Prevention” page, including the “Fraud Alerts” section, on the Law Society website at www.lawsociety.bc.ca/support-and-resources-for-lawyers/lawyers-insurance-fund/fraud-prevention.

- **Searches of lawyers’ electronic devices at borders.** See “Crossing Borders with Electronic Devices—Canada, the US and Beyond” in the Spring 2019 Benchers’ Bulletin for recommendations to minimize the risks of compromising professional responsibilities when travelling with electronic devices across borders. Links to correspondence about this topic between the Law Society, the Federation of Law Societies, and the federal government are included.

- **Discipline Advisory—Private Lending.** The Law Society has warned lawyers that there is an increased risk of illegal activity with private lending and that it is a means by which proceeds of crime can be laundered. The warning is available at https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/discipline-advisories/april-2,-2019.

- **Exemptions on additional property purchase tax on foreign entities.** The Property Transfer Tax Regulation provides for relief, in certain circumstances, from the additional 20% property purchase tax on transfers of residential property in the Metro Vancouver Regional District, Capital Regional District, Regional District of Central Okanagan, Fraser Valley Regional District, and Regional District of Nanaimo to “foreign entities”. See ss. 17.1 to 20 regarding the exemption for a foreign national who has confirmation as a worker under the Provincial Nominee Program, and see s. 21 regarding the refund of the extra tax paid by a transferee who became a Canadian citizen or permanent resident within one year of the registration date.

- **Aboriginal law.** Special considerations apply to businesses involving “Indians” and Indian “reserves” (both as defined in the Indian Act, R.S.C. 1985, c. I-5). While significant tax and other advantages may be available under the Indian Act, these are affected by the type of business, transaction nature, business entity (sole proprietorship, partnership, joint venture, trust, or incorporated company), location of business activity on or off reserve land, and the specific reserve and its governance.

- **Bank Holds on Trust Funds.** Financial institutions can and have placed holds on trust cheques, certified cheques, and bank drafts. A hold could be for as little as one day or for four or more days. During the hold, the financial institution seeks to verify that the funds are available from the account at the financial institution from which the financial instrument is drawn. If the financial institution determines that the financial instrument is counterfeit or altered, the institution and the lawyer may be protected from the fraud. However, a hold on a legitimate instrument can cause potential issues with closings and lawyers’ undertakings. For risk mitigation tips, consult this Law Society Practice Resource at www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/Holds-on-certified-cheques-and-bankdrafts.pdf.

### LEGEND — NA = Not applicable  L = Lawyer  LA = Legal assistant

### ACTION TO BE CONSIDERED

<table>
<thead>
<tr>
<th>NA</th>
<th>L</th>
<th>LA</th>
<th>DATE DUE</th>
<th>DATE DONE</th>
</tr>
</thead>
</table>

## CONTENTS

1. Initial Contact
2. Initial Interview
3. After the Initial Interview
4. Drafting the Agreement
5. Prior to Closing
6. Closing
7. Post Closing

## CHECKLIST

### 1. INITIAL CONTACT

1.1 Arrange the initial interview.

1.2 Ask the client to bring to the initial interview all available financial and operational information on the target company and vendor, particularly financial statements, annual reports, prospectuses, press releases, list of assets, contracts, leases, government permits, etc. Where information is not available, consider how it will be obtained.

1.3 Confirm compliance with Law Society Rules 3-98 to 3-109 on client identification and verification and complete the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1) checklist.

1.4 Determine and assess actual and potential conflicts of interest. See Code of Professional Conduct for British Columbia ("BC Code"), s. 3.4 and the model conflicts of interest checklist on the Law Society website at www.lawsociety.bc.ca/docs/practice/resources/checklist-conflicts.pdf.

### 2. INITIAL INTERVIEW

2.1 Advise the client regarding calculation of your account, the method and timing of payment, and the conditions upon which you will act as solicitor (see BC Code, s. 3.6; see also item 3.1). Ask the client to sign a retainer letter or agreement. If there is more than one purchaser, make it clear for whom you are acting. 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). If your retainer will be limited in scope (e.g., confidential drafting), note that BC Code rule 3.2-1.1 requires that, before undertaking a “limited scope retainer” (a defined term under BC Code rule 1.1-1), you must advise the client about the nature, extent, and scope of the services that you can provide and must confirm in writing as soon as practicable what services will be provided. Note that rule 3.2-1.1 does not apply to situations in which you are providing summary advice or to an initial consultation that may result in the client retaining you as lawyer. See BC Code, s. 3.6 for the rules regarding reasonable fees and disbursements, and commentary [1] to rule 3.6-3 regarding the duty of candour owed to clients respecting fees and other charges. Also be aware of the obligations in BC Code rules 3.1-2, 7.2-6, and 7.2-6.1. Note Law Society Rule 3-59 with respect to the restrictions on receiving cash and Rule 3-70 for records of cash transactions.
Note also Rule 3-58.1 which requires that funds paid into or out of a trust account must be directly related to legal services provided by the lawyer or law firm.

2.2 Determine whether the client has already reached an agreement with the vendor concerning the general terms of the transaction. If not:

.1 Advise the client regarding the possibility of structuring the transaction as a share purchase (if appropriate in the circumstances). Consider the tax consequences of purchasing assets versus purchasing shares.

.2 Consider signing a confidentiality agreement to allow negotiations to commence. If the client and vendor are competitors, consider safeguards in sharing competitively sensitive information. Sharing competitively sensitive information can be problematic, particularly if the transaction fails to close. Consider the implications of the Competition Act, R.S.C. 1985, c. C-34.

2.3 Determine the client’s objectives and why the client wants to complete this transaction. Will it be integrated into an existing business? Seek to determine specific risks and regulatory requirements that may be of concern to the purchaser.

2.4 Consider the name under which the business will be conducted post-closing to determine due diligence of trademarks and other intellectual property.

2.5 Review financial statements and other information with the client, the client’s accountant, and tax advisor (if you are not providing tax advice).

2.6 Determine the principal elements of the transaction: who is buying what from whom, and for how much? How does the client intend to finance the transaction? Are there any conditions to be met before the deal can proceed (e.g., regulatory approvals)? Are there any third-party consents or assignments that need to be obtained (e.g., landlord’s consent to an assignment of lease)? Are there any unusual restrictions, covenants, or conditions that are important? Does the business being conducted by the company involve any particular risks (e.g., environmental), and how are these risks to be allocated between the purchaser and the vendor? Are there any special or unusual procedures that need to be followed (e.g., governmental consultation with Indigenous groups)? Consider the use of any restrictive covenant against the vendor and the target, and its enforceability.

2.7 Review any tax implications of the transaction:

.1 Consider the applicability of PST/GST and input tax credits.

3. AFTER THE INITIAL INTERVIEW

3.1 Confirm in writing your retainer and instructions from the client (see item 2.1).

3.2 Ensure that you will not act for more than one party to the transaction unless you comply with the rules on conflicts (see BC Code, s. 3.4, and the model conflicts of interest checklist). If you are permitted to act under a joint retainer, see BC Code rules 3.4-5 to 3.4-9 and the precedent letter on the Law Society website at www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/ltr-joint-retainer.pdf that may be used as a basis for compliance with BC Code rule 3.4-5. If the client is a company,
verify who has the authority to give instructions. Consider having a directors’ resolution confirm your retainer and giving one officer or director the authority to instruct you.

3.3 If the client has not reached a tentative agreement with the vendor, draft a letter of intent outlining the transaction in clear terms. Consider whether the client wishes the letter of intent (or any parts of it) to be binding. Review the letter with the client to ensure that it reflects their intentions. Forward the letter to the vendor. Negotiate, if so instructed.

3.4 Finalize the arrangements regarding financing, if any, if so instructed.

3.5 Initiate the necessary searches to complete the due diligence for the transaction and, where necessary, obtain written authorization from the vendor and its shareholders for release of information and the relevant government account numbers (note: certain searches may vary for federally regulated undertakings even if operated only in British Columbia). Consider in particular the following:

.1 Corporate Registry (or equivalent office in jurisdiction of incorporation) re: memorandum (where still applicable), notice of articles, articles, and any amendments; registered and records offices; annual reports; directors and officers; whether the company has been struck off and subsequently restored; copies of encumbrances which may still bind the company; order certificate of good standing; check that there is no notice of dissent pursuant to *Business Corporations Act*, S.B.C. 2002, c. 57, s. 301(5).

.2 Personal Property Registry.

.3 ICBC Vehicle Records Department.

.4 Land Title Office search for judgments; title; copies of charges and permitted encumbrances; copies of leases and restrictive covenants; other relevant information.

.5 Office of the Superintendent of Bankruptcy (Innovation, Science and Economic Development Canada).


.7 Canada Revenue Agency:
   (a) Income tax re: source deductions and corporate or personal income tax.
   (b) GST/HST

.8 BC Ministry of Finance: PST

.9 WorkSafeBC.

.10 Employment Standards Branch.

.11 Labour Relations Board. Search for pending certifications, collective agreements, or any disputes before the Board involving the target company.

.12 Consider searches re: other special assets being acquired (e.g., Mineral Titles Online, Ministry of Forests, Lands, Natural Resource Operations and Rural Development, Canadian Register of Vessels (Commercial and Pleasure Craft), Small Vessel Register (Commercial)).
.13 Insurance agent (confirming placement of adequate insurance).

.14 Municipal offices re: taxes and utilities; planning department; licences and permits; fire inspector; health inspector; zoning and restrictive by-laws.

.15 Court registry search re: actions commenced against the vendor or its shareholders (consider which registries to search).

.16 Sheriff’s offices for writs of executions.

.17 Environmental matters: environment ministries (federal and provincial), Fisheries and Oceans Canada, Contaminated Site Registry. Consider having an environmental audit conducted.

.18 Canadian Intellectual Property Office (patents, trademarks, copyrights, etc.).

.19 Consider searching the Canadian Internet Registration Authority (www.cira.ca).

.20 Review CLEBC’s Due Diligence Deskbook for other possibly relevant searches and the appropriate scope of the searches.

3.6 Review all material contracts and permits to be assigned, and consider whether consents to assignment are required.

3.7 Consider consulting a tax expert.

3.8 Consider the impact of the transaction on the Family Law Act, S.B.C. 2011, c. 25 (or, if applicable, the former legislation, Family Relations Act, R.S.B.C. 1996, c. 128); Investment Canada Act, R.S.C. 1985, c. 28 (1st Supp.); Competition Act, R.S.C. 1985, c. C-34 (i.e., regarding mergers and notifiable transactions); and other relevant legislation.

3.9 Open a document file and retain successive drafts of the agreement. Open a separate sub-file for each major document required in the transaction.

4. DRAFTING THE AGREEMENT

4.1 Before drafting the agreement, prepare a timetable and a draft of the closing agenda that will act as a reminder of what is required in the transaction and when.

4.2 Prepare an outline of the document. The ASSET PURCHASE AGREEMENT DRAFTING (B-2) checklist may serve as a basis for the document.

4.3 Prepare the first draft.

4.4 Review the first draft for coherence and continuity. Go over the first draft with the client to ensure that it expresses the client’s intentions.

4.5 When you and the client are satisfied with the agreement, send it to the vendor or their lawyer for comment and changes.

4.6 Note changes to the agreement during the course of negotiation in some readily discernible manner.

4.7 Do not alter the document without indicating the changes to the vendor’s lawyer.

4.8 When negotiations conclude, prepare the final agreement and check to ensure that the document reflects the transaction as it has been formulated.
<table>
<thead>
<tr>
<th>ACTION TO BE CONSIDERED</th>
<th>NA</th>
<th>L</th>
<th>LA</th>
<th>DATE DUE</th>
<th>DATE DONE</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.9 Arrange for signing of the agreement.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

5. PRIOR TO CLOSING

5.1 Prepare or obtain all the necessary documentation (for additional considerations, see the ASSET PURCHASE AGREEMENT DRAFTING (B-2) checklist), including:

1. Conveyancing documents with respect to the transfer of real property interests. Note the obligation to maintain the security of the digital signature. Password entry is required each time a lawyer signs an electronic document. The offence provision under s. 168.9(b) of the Land Title Act, R.S.B.C. 1996, c. 250, the Juricert terms and conditions, Law Society Rule 3-64.1, and BC Code rule 6.1-5 prohibit lawyers from permitting others to use their personalized encrypted electronic access to register documents or from disclosing to others, including support staff, the password or access phrase or number.

2. Bill of sale for chattels and other personal property.

3. Assignment of contracts.

4. Transfer forms for licensed vehicles, registered vessels.

5. Assignment of receivables.

6. Assignment of intangible property, such as trademarks, patents and goodwill, etc.

7. Third-party consents as necessary, especially re: franchises, leases, licences and all contracts essential to operate the business, etc.

8. Releases of encumbrances not assumed by client.

9. Certified extract of a resolution of the vendor company’s directors authorizing the execution, delivery, and implementation of the agreement.

10. Certified extract of special resolution of members of the vendor company pursuant to Business Corporations Act, s. 301(1), if required.

11. Resolution of the purchaser’s directors authorizing the transaction.

12. Assumption agreements, confirmation of outstanding balances, and other covenants and assurances required to procure releases with respect to liabilities or indebtedness being assumed.

13. Certified copies of insurance policies with transfer and consent forms duly endorsed (if applicable).

14. Tax remittances (confirm obligation for and timing of payment):

   a. Certified cheque payable to the Minister of Finance for applicable PST/GST in respect of tax payable on the transaction, together with an appropriate remittance form.

   b. Calculation of federal GST payable on closing, if an election under Excise Tax Act, R.S.C. 1985, c. E-15, s. 167, is not used.

   c. Calculation of property transfer tax payable on closing of a conveyance of real property. (Note the additional property transfer tax applicable to foreign entities pursuant to s. 2.02 of the Property Transfer Tax Act, R.S.B.C. 1996, c. 378. The taxable amount is 20% for property transfers of residential properties on or after...
February 21, 2018, in the Capital Regional District, Fraser Valley Regional District, Regional District of Central Okanagan, and Regional District of Nanaimo.)

.15 Extraprovincial registration pursuant to the *Business Corporations Act* (where the purchaser is a foreign corporation intending to carry on business in British Columbia). Note that British Columbia and Alberta agreed, under the *Trade, Investment and Labour Mobility Agreement* (the “TILMA”), to reconcile their business registration and reporting requirements, so that an enterprise meeting the requirements of one province will be deemed to meet the requirements of the other province (however, the need for extraprovincial registration has not been eliminated). The relevant provisions of the *Trade, Investment and Labour Mobility Agreement Implementation Act*, S.B.C. 2008, c. 39 (the “TILMA Act”), and the Extraprovincial Companies and Foreign Entities from a Designated Province Regulation, B.C. Reg. 88/2009, came into force on April 27, 2009. The *TILMA Act* added several sections to the *Business Corporations Act*, and amended others. The New West Partnership Trade Agreement (the “NWPTA”) between British Columbia, Alberta, and Saskatchewan, implemented by BC Registry Services on July 1, 2012, eliminates the need to file and maintain company information with each province individually (though not the need for extraprovincial registration). For information about corporate registry procedures pursuant to the NWPTA, visit the NWPTA page on the Corporate Registry website at www.bcregistryservices.gov.bc.ca.

.16 Statements of adjustments.

.17 Certificate pursuant to *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), s. 116 (regarding tax to be withheld by purchaser if the vendor is not a resident of Canada).

.18 Security documents and financing statements under the *Personal Property Security Act*, R.S.B.C. 1996, c. 359, if required.

.19 Employment contracts, if required.

.20 Non-competition and confidentiality agreements.

.21 Banking arrangements.

.22 Opinion of the vendor’s lawyer. Consider including that the vendor is duly incorporated, validly existing and in good standing and all necessary steps and corporate proceedings have been taken to validate the transfer of assets, the agreement has been duly executed and delivered and is a legal, valid and binding obligation, enforceable against the vendor, and that lawyers know of no claims or actions affecting the assets or the transfer of the assets to the purchaser. Consider opinions specific to the transaction (see statements and opinions of the Solicitors’ Legal Opinions Committee on the Law Society website at www.lawsociety.bc.ca/support-and-resources-for-lawyers/your-practice/solicitors-legal-opinions). See also CLEBC’s *Advising British Columbia Businesses*.

.23 Evidence of appropriate filings under the *Investment Canada Act*, the *Competition Act*, and any other required regulatory consents.

.24 *Excise Tax Act*, s. 167 election regarding GST exemption, if applicable.
.25 *Income Tax Act*, s. 22 election regarding accounts receivable exemption, if applicable.

.26 Name the change documents for the vendor, if applicable.

5.2 Ensure that the conditions of the client’s obligation to close have been satisfied.

5.3 Complete the financial arrangements.

5.4 Prepare the final draft of the closing agenda.

5.5 Gather together the documents needed for closing.

5.6 Update searches for closing.

5.7 Remind the client to arrange insurance on the assets being purchased, and that the insurance should take effect when (or before) the risk passes.

5.8 Consider application of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17.

5.9 Consider timing and management of funds (payment by wire transfers, lawyers’ trust accounts, Law Society trust administration fee, etc.). Use directions to pay as necessary. With regard to wire transfers, see Law Society Rules 3-64.1 and 3-64.2 and the *Trust Accounting Handbook* at www.lawsociety.bc.ca/docs/trust/Trust-Accounting-Handbook.pdf.

Be aware of scams making fraudulent changes in payment instructions and be vigilant about the client identification and no-cash rules. See the “Fraud Prevention” page on the Law Society website at www.lawsociety.bc.ca/support-and-resources-for-lawyers/lawyers-insurance-fund/fraud-prevention.

6. **CLOSING**

6.1 Ensure that all the conditions of closing are satisfied.

6.2 Ensure that each party receives the appropriate documents.

6.3 Transfer the property and pay the purchase price and all applicable taxes.

6.4 Obtain acknowledgment in writing from each party that all conditions of closing have been satisfied or waived.

6.5 Complete filings at the Land Title Office as necessary in respect of real property interests. Register any financing statements and financing change statements that require registration at the Personal Property Registry. Do these registrations on or before closing, if possible.

7. **POST CLOSING**

7.1 Send copies of insurance policies to encumbrance holders, as required.

7.2 Remit GST if *Excise Tax Act*, s. 221(1), applies.

7.3 Prepare a reporting letter and account as soon as practicable after closing. Forward the brief of documents to the client and indicate those matters requiring further action on the part of the client.

7.4 Advise the client to file tax elections in time (they must be filed within the regular reporting period in which the closing falls), and advise the client to confirm with their tax advisor whether any other filings are required.
7.5 Close the file. Consider storage and destruction requirements. See *Closed Files—Retention and Disposition*, August 2017, Appendix B at www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/ClosedFiles.pdf.