

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;">INTRODUCTION</p> <p>Purpose and currency of checklist. This checklist is designed to be used with the CLIENT IDENTIFICATION, VERIFICATION, AND SOURCE OF MONEY (A-1), CLIENT FILE OPENING AND CLOSING (A-2), and SECURITY AGREEMENT DRAFTING (B-13) checklists. It is designed for counsel representing a lender or other party taking a security interest in personal property from a debtor. Consider whether a collateral mortgage on land is required. This checklist is current to September 1, 2021.</p> <p>Key instructions for use of checklist:</p> <ul style="list-style-type: none"> • Use of debenture. Where a debenture is being used (e.g., in certain multi-jurisdictional transactions) instead of a general security agreement, the items marked “(DEB)” should be considered. For the most part, a debenture and a general security agreement are not markedly different, except that a general security agreement charges only personal property and may include a floating charge on land, whereas a debenture may charge both personal and real property by way of fixed and floating charges. A debenture contains a promise to pay, whereas a general security agreement usually does not. • Fixtures and crops. Personal Property Security Regulation, B.C. Reg. 227/2002, s. 1(3) to (5), should be considered in the context of a charge on land, fixtures, or crops. The intent of these provisions is to ensure that fixtures and crops are included within the definition of personal property where the fixtures and crops are charged in conjunction with other personal property, but not where the fixtures or crops are charged in conjunction with an interest in the land to which the fixtures or crops are affixed. The wording of the sections, however, is complex and should be carefully reviewed. <p>New developments:</p> <ul style="list-style-type: none"> • COVID-19 pandemic. The COVID-19 pandemic continues to have significant impacts on business, including loan transactions: inability to attend, or aversion to, in-person meetings; possible delays at government agencies and public registries; border closures; unpredictable economic circumstances, etc. Counsel should keep apprised of developments related to COVID-19 (and response measures) that may affect transactions. Note that: <ul style="list-style-type: none"> ○ The Land Title Survey Authority has implemented temporary practice changes that remain effective until further notice. The main changes involve remote witnessing procedures and acceptance of true copies instead of originals. For further information see: tsa.ca/covid-19-re-sources/ and see LTSA Practice Bulletin No. 01-20. ○ 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 which have been delayed but are otherwise permitted to be filed or issued beyond the typical limitation period. 					

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<ul style="list-style-type: none"> <li data-bbox="110 260 992 348">• Arbitration Act. The <i>Arbitration Act</i>, S.B.C. 2020, c. 2, came into force on September 1, 2020. It is strongly recommended that practitioners review the new legislation prior to drafting or revising arbitration clauses in agreements. <li data-bbox="110 575 992 1119">• Land Owner Transparency Act. On May 16, 2019, the <i>Land Owner Transparency Act</i>, S.B.C. 2019, c. 23 (the “<i>LOTA</i>”) received Royal Assent and is in force as of November 30, 2020. B.C. Reg. 250/2020 also sets out the new Land Owner Transparency Regulation, most of which was made effective November 30, 2020, while Part 4 was made effective April 30, 2021. The <i>LOTA</i> requires a transparency declaration to be filed in the new Land Owner Transparency Register (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. The <i>LOTR</i> will be administered by the Land Title and Survey Authority of British Columbia. A reporting body under the <i>LOTA</i>—which includes most corporations, trusts, and partnerships, subject to limited exemptions—will have to file a transparency report upon registration and any time there is a change in interest holders or beneficial owners, even if legal title is not transferred. For further information, see the Land Owner Transparency Registry website and also the course presentation and materials by S. Carter, R. Danakody, and C.R. MacDonald, “Land Title and Survey Authority of British Columbia: Land Owner Transparency Registry”, in <i>Residential Real Estate Conference 2020</i> (CLEBC, 2020), available through CLEBC Courses on Demand <li data-bbox="110 1136 992 1587">• Exemptions on additional property transfer tax on foreign entities. The Property Transfer Tax Regulation, B.C. Reg. 74/88, provides for relief, in certain circumstances, from the additional 20% property transfer tax on transfers of residential property in the Metro Vancouver Regional District, Capital Regional District, Regional District of Central Okanagan, Fraser Valley Regional District, and Regional District of Nanaimo to “foreign entities”. Effective June 1, 2020, see s. 22 for the “Exemption for general partner or bare trustee in limited partnership” and s. 23 regarding applications for refunds for general partners or bare trustees of limited partnerships in respect of a taxable transaction where the application for a s. 22 exemption was missed. A s. 22 application may be made within six years after the relevant registration date. See also ss. 17.1 to 20 for the exemption for a foreign national who has confirmation as a worker under the Provincial Nominee Program, and s. 21 regarding the refund of the extra tax paid by a transferee who became a Canadian citizen or permanent resident within one year of the registration date. <li data-bbox="110 1604 992 1845">• Enhanced Scrutiny under the <i>Investment Canada Act</i>, R.S.C. 1985, c. 28 (1st Supp.), s. 3. On April 18, 2020, in response to COVID-19, the Minister of Innovation, Science and Industry 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. See the full policy statement at www.ic.gc.ca/eic/site/ica-lic.nsf/eng/lk81224.html. <p data-bbox="110 1866 199 1898">Of note:</p>					

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<ul style="list-style-type: none"> <p>Money laundering—companies, trusts, and other entities. The prevalence of money laundering in British Columbia (particularly in the area of real estate) continues to be a concern. In response to media reports and independent reviews into money laundering by retired RCMP deputy commissioner Dr. Peter German, Q.C. and an expert panel led by Maureen Maloney, Q.C., a professor at Simon Fraser University, Burnaby, and former deputy attorney general, the provincial government established a Commission of Inquiry into Money Laundering in British Columbia, with Austin Cullen J. appointed as the commissioner.</p> <p>The inquiry’s broad mandate includes the real estate and professional services sectors (including lawyers). It also includes the corporate sector in relation to the use of shell companies, trusts, securities and financial instruments. The Law Society is a participant in the inquiry. The commissioner’s final report on money laundering in British Columbia, with recommendations, was scheduled for delivery in May 2021 but was granted an extension to December 15, 2021, as a result of the 2020 provincial election.</p> <p>As a means of laundering money, criminals use ordinary legal instruments, (such as shell and numbered companies, bare trusts, and nominees) in the attempt to disguise the true owners of real property, the beneficial owners. These efforts can be hard to detect. As such, lawyers must assess the facts and context of the proposed retainer and financial transactions. Lawyers should be aware of red flags, and if a lawyer has doubts or suspicions about whether they could be assisting in any dishonesty, crime, or fraud, they should make enough inquiries to determine whether it is appropriate to act (<i>BC Code</i> rules 3.2-7 and 3.2-8 and Law Society Rules 3-103(4), 3-109, and 3-110). See the resources on the Law Society’s Client ID & Verification resources webpage such as the Source of Money FAQs, Risk Assessment Case Studies for the Legal Profession in the context of real estate, trusts, and companies, and the Red Flags Quick Reference Guide. Also see the Risk Advisories for the Legal Profession regarding real estate, shell corporations, private lending, trusts, and litigation; and “Forming Companies and Other Structures—Managing the Risk” (<i>Benchers’ Bulletin</i>, Spring 2021); and the Discipline Advisories including country/geographic risk and private lending. Lawyers may contact a Law Society practice advisor at practiceadvice@lsbc.org for a consultation about the applicable <i>BC Code</i> rules and Law Society Rules and obtain guidance.</p> <p>Aboriginal law. Security agreements that pertain to reserve lands or the personal property of a band or an “Indian” (as defined by the <i>Indian Act</i>, R.S.C. 1985, c. I-5) on reserve lands must be considered in light of the <i>Indian Act</i>. Restrictions are placed on the ability of a band or an Indian to grant interests in reserve lands to others: see ss. 20, 28, and 58. As well, ss. 89 and 90 of the <i>Indian Act</i> protect the real and personal property of an Indigenous person or a band if it is situated on reserve lands. Typically, it is not subject to a charge, pledge, mortgage, attachment, levy, seizure, distress, or execution in favour of any person other than an Indian or a band. Note that a leasehold interest in designated land is an exception, as is personal property sold under conditional sales agreements: see s. 89(1.1) and (2).</p> 					

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<p>In addition to <i>Indian Act</i> considerations, some bands or First Nation entities have entered into treaties or self-government agreements or have special land-tenure agreements in place that may affect the legal force and effect of security agreements. Also, there may be special agreements in place for individual Indigenous persons to opt out of treaties or reserve tenures (for example, in the Treaty 8 area).</p> <p>If a security agreement involves reserve lands or personal property situated on a reserve or on lands subject to a treaty, consider seeking advice from a lawyer who has experience in Aboriginal law matters. Further information on Aboriginal law issues is available on the “Aboriginal Law” page of the “Practice Areas” section of the Continuing Legal Education Society of British Columbia website, www.cle.bc.ca, and in other CLEBC publications.</p> <ul style="list-style-type: none"> • Additional resources. For more information about security agreements, see <i>British Columbia Personal Property Security Act Practice Manual</i> (especially the SECURED TRANSACTION checklist) (CLEBC, 1995–); <i>Due Diligence Desk-book</i> (CLEBC, 1994–); <i>Real Estate Financing: Annotated Precedents</i> (CLEBC, 1994–); <i>Priorities—2013</i>, course materials (CLEBC, 2013); <i>Priorities—2009</i>, course materials (CLEBC, 2009); <i>Advising British Columbia Businesses</i> (CLEBC, 2006–); and <i>British Columbia Creditors’ Remedies: An Annotated Guide</i>, 2nd ed. (CLEBC, 2020–). • Law Society of British Columbia. For changes to the Law Society Rules and other Law Society updates and issues “of note”, see LAW SOCIETY NOTABLE UPDATES LIST (A-3). Note in particular the commentary on fraud prevention, bank holds on trust funds, risks of private lending, and all other matters that may be relevant to loan transactions. The Law Society’s resources related to procedures generally and issues arising from COVID-19 can be viewed at www.lawsociety.bc.ca/about-us/covid-19-response/. <p style="text-align: center;">CONTENTS</p> <ol style="list-style-type: none"> 1. Initial Contact 2. Initial Interview 3. After the Initial Interview 4. Preparing the Documents 5. Drafting the Security Agreement 6. Closing the Transaction 7. Closing the File <p style="text-align: center;">CHECKLIST</p> <ol style="list-style-type: none"> 1. INITIAL CONTACT <ol style="list-style-type: none"> 1.1 Arrange the initial interview. 1.2 Ask the client to bring to the initial interview all relevant information (e.g., a copy of the commitment letter, internal memoranda, etc.). Find out the full names and addresses of the creditor, debtor, and guarantors. Check for trade names, business names, and previous names. 1.3 Conduct a conflicts of interest check. Refer to the CLIENT FILE OPENING AND CLOSING (A-2) checklist. 					

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<p>1.4. Confirm compliance with Law Society of British Columbia Rules 3-98 to 3-110 for client identification and verification and the source of money for financial transactions. Complete the CLIENT IDENTIFICATION, VERIFICATION, AND SOURCE OF MONEY (A-1) checklist. Consider periodic monitoring requirements (Rule 3-110).</p> <p>2. INITIAL INTERVIEW</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 See item 1.2 regarding identifying other parties. Obtain the names and addresses of the other parties' counsel. Clarify your role in the transaction and that of other advisors to the client.</p> <p>2.3 Determine whether the debtor is responsible for reimbursing the client for your account and, if so, whether the debtor requires any information with respect to calculation, method, timing of payment, and conditions upon which you are acting.</p> <p>2.4 In the case of a new corporate client, consider obtaining a directors' resolution confirming the conditions of the retainer and setting out who will give instructions and to whom you will report.</p> <p>2.5 Discuss the client's objectives, the anticipated closing date, and the background of the transaction.</p> <p>2.6 Discuss whether perfection will be by registration or by possession in respect of personal property forming collateral subject to the security. Perfection by registration is desirable even if there is also perfection by possession.</p> <p>2.7 Collect information and discuss the provisions of the security agreement, referring to the SECURITY AGREEMENT DRAFTING (B-13) checklist. Include:</p> <p>.1 Description and location of the collateral and location of the places of (residence or) business and chief executive office of the debtors:</p> <p>(a) Description and location of personal property, including make and serial numbers of motor vehicles and other serial-numbered goods (see Personal Property Security Regulation, B.C. Reg. 227/2002).</p> <p>(b) Identify property not subject to intended security interests or the <i>Personal Property Security Act</i>, R.S.B.C. 1996, c. 359 (the "PPSA") (see PPSA, s. 4).</p> <p>(c) Identify property that may not be personal property governed by PPSA, s. 4 (e.g., intellectual property and life insurance policies).</p> <p>(d) If the collateral includes land, recommend a registered mortgage instead of a floating charge.</p> <p>(e) If the collateral includes aircraft objects within the meaning of the <i>Convention on International Interests in Mobile Equipment</i>, signed in Cape Town on November 16, 2001, and the <i>Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment</i>, consider the application of</p>					

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<p>the <i>Convention and Protocol</i>. The <i>Convention and Protocol</i> have the force of law in British Columbia under the <i>International Interests in Mobile Equipment (Aircraft Equipment) Act</i>, S.B.C. 2011, c. 12.</p> <p>(f) If the collateral includes consumer goods (see <i>PPSA</i>, s. 1(1)), consider the effect of <i>PPSA</i>, s. 67. Generally avoid having the debtor grant security over consumer goods and other collateral as security for the same indebtedness.</p> <p>.2 Amount of loan: revolving, non-revolving.</p> <p>.3 Interest rate: fixed, fluctuating, method of calculation, and compliance with the <i>Interest Act</i>, R.S.C. 1985, c. I-15. It is usually prudent to insert a provision addressing recent case law respecting the <i>Criminal Code</i>, R.S.C. 1985, c. C-46, s. 347, and the criminal rate of interest.</p> <p>.4 Repayment terms.</p> <p>.5 Guarantors (limited or unlimited, joint and several, several, rateable).</p> <p>.6 Special covenants.</p> <p>.7 Loan disbursement date.</p> <p>.8 Financial statements.</p> <p>.9 Purpose of loan.</p> <p>.10 Whether the security agreement is also to secure indirect obligations of the debtor to the client, e.g., as a guarantor.</p> <p>.11 Consider or obtain:</p> <p>(a) Legal description of and interests in real property.</p> <p>(b) Names of vessels (registered or licensed); whether a marine mortgage is required.</p> <p>(c) Descriptions of other assets (e.g., timber interests, water rights, aircraft, assignments of contracts; if crops, when planted and when “growing”).</p> <p>.12 Whether collateral will be commingled.</p> <p>.13 Accessions.</p> <p>2.8 Determine the most appropriate type of security agreement (e.g., general, specific, site-specific, inventory, receivables).</p> <p>(DEB) Determine whether a debenture is a more appropriate form of security agreement than a general security agreement. (Note that an unsecured debenture is not a security agreement.)</p>					

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<p>2.9 Ensure that statutory restrictions on providing financial assistance do not apply, or if they do, they are satisfied; identify any officers’ certificates or other evidence you rely on in reaching this conclusion, and any required legal opinions. Under <i>Business Corporations Act</i>, S.B.C. 2002, c. 57 (the “BCA”), s. 195, British Columbia companies may provide financial assistance to any person for any purpose, subject to the directors satisfying their obligations under the common-law business judgment rule, but will be required to notify their shareholders of the financial assistance in some circumstances. Resolutions of directors of British Columbia companies providing financial assistance should evidence the reasons why giving financial assistance is in the best interests of the company—a simple recital of best interests may not be adequate.</p> <p>2.10 Consider and obtain instructions:</p> <ul style="list-style-type: none"> .1 Should any registrations be performed before security is executed? If not, obtain clear instructions as to when to register. Registration under the <i>PPSA</i> is generally made in advance of closing, once the general form of the security agreements has been settled. Registration under the <i>PPSA</i> (except for filing fixtures notices in the land title office (“LTO”)) may be made before the security agreement is executed. .2 Is the lender entitled to any purchase money security interests (“PMSIs”)? If so, ensure that all necessary steps are taken to obtain the “super priority” conferred by PMSI status (see <i>PPSA</i>, s. 34). .3 Is a carrier or other person in possession of the collateral an agent of the debtor? Particular caution must be taken if the client wishes to establish a PMSI. .4 Are there any prior unregistered interests? .5 Is the owner of the property also the beneficial owner? <p>2.11 If a lender is taking security on personal property that is or could become fixtures or crops, consider whether a <i>PPSA</i> fixtures notice should be obtained and registered under the <i>Land Title Act</i>, R.S.B.C. 1996, c. 250 (see <i>PPSA</i>, ss. 36 and 37).</p> <p>2.12 Determine whether there are any consents or priority or other agreements required for the charges contemplated. Such consents and agreements often involve persons who would otherwise have prior rights to the collateral absent contractual agreement. Consents of third parties to assignments of material contracts or licences may also be required. Review the terms and conditions of licences that are being encumbered to ensure that they do not limit the secured party’s right to dispose of them.</p> <p>2.13 Determine where the collateral is located and whether the collateral has been in British Columbia for 60 days (see <i>PPSA</i>, s. 5(3)).</p> <p>2.14 If any of the collateral, residence, business locations, the chief executive office, or jurisdiction of formation of the debtor are outside British Columbia, review <i>PPSA</i>, ss. 5 to 8.1.</p> <p>2.15 Determine whether the debtor or the secured party is subject to any statutory or regulatory requirements that affect its ability to lend, borrow, or take or hold security.</p>					

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<p>2.16 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 www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/Ltrs-NonEngagement.pdf).</p>					
<p>3. AFTER THE INITIAL INTERVIEW</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 for client identification and verification and the source of money for financial transactions (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. Consider having a directors’ resolution confirm your retainer and giving one officer or director the authority to instruct you.</p>					
<p>3.4 If acting for the secured party, send a letter or email to, or telephone, counsel for the debtor, advising that you are acting for the secured party. If the debtor has not retained counsel, send a letter urging the debtor to obtain independent legal advice. (If not acting for the secured party, communicate with counsel representing the other parties that you are acting for your client, and if other parties are unrepresented, urge them in writing to get independent legal representation.) Make it clear to other parties that you are not protecting their interests and that you are acting exclusively in the interests of your client. <i>Code of Professional Conduct for British Columbia</i> (the “BC Code”), rule 7.2-9.</p>					
<p>3.5 Conduct relevant searches (and obtain and review copies of relevant documents), such as:</p>					
<p>.1 Company search on corporate parties: debtor, guarantor, and, where necessary, secured party. Include:</p> <ul style="list-style-type: none"> (a) Registered and records office. (b) Annual report. (c) Directors and officers. (d) Notice of articles, articles, and amendments. (e) Good standing, including whether the company has been struck off and subsequently restored. Consider obtaining a certificate of good standing. (f) Powers, the manner in which they are to be exercised, and whether they are to be exercised by shareholders or directors, including: <ul style="list-style-type: none"> (i) Debtor’s power to borrow; check on terms and conditions of prior security interests (e.g., whether there is any charge or security interest restricting the right to grant a fixed charge. If the debtor is a society, s. 34(2) of the <i>Societies Act</i>, S.B.C. 2015, c. 18 provides that the bylaws of a society may restrict or prohibit the society’s ability to borrow money or to issue bonds, debentures, etc. 					

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<p>(ii) Power to provide financial assistance, if applicable. Under the <i>BCA</i>, s.195, British Columbia companies have the power to provide financial assistance to any person for any purpose, subject to the directors satisfying their obligations under the common law business judgment rule (see item 2.7 in this checklist), but will be required to notify their shareholders of the financial assistance if and when required under the <i>BCA</i>.</p> <p>(iii) Who can perform the acts contemplated on behalf of the debtor and guarantor (e.g., directors or shareholders, from whom authorizing resolutions should be obtained)?</p> <p>(iv) Lender’s power to lend. Under the <i>BCA</i>, s. 195, British Columbia companies have the power to provide financial assistance, including loans, but will be required to notify their shareholders of the financial assistance if and when required under the <i>BCA</i>. Also consider any limitations such as the loan-to-property value ratio, or any prohibitions on lending to directors, shareholders, etc., or the aggregate value of loans (which may be contained in legislation governing the lender, e.g., <i>Bank Act</i>, S.C. 1991, c. 46; <i>Insurance Companies Act</i>, S.C. 1991, c. 47; <i>Trust and Loan Companies Act</i>, S.C. 1991, c. 45; and <i>Financial Institutions Act</i>, R.S.B.C. 1996, c. 141).</p> <p>(v) Disclosure requirements applicable to the lender.</p> <p>(vi) Manner of executing documents (signing authority, use of seal).</p> <p>.2 Personal Property Registry for security agreements registered.</p> <p>(a) Search for the debtor and guarantors under their full current names, any business names, aliases, former names, predecessor names, and similar names. Search under the serial number for each serial-numbered good (see the Personal Property Security Regulation, s. 1, for the definition of “serial numbered goods,” and s. 10 for the definition of “serial number”).</p> <p>(b) Consider obtaining copies of registered security agreements from relevant secured parties (<i>PPSA</i>, s. 18 demand).</p> <p>(i) If your client is not an appropriate party, obtain execution of an s. 18 demand by the debtor or guarantor; or</p> <p>(ii) Get certified copies of security agreements from the lawyer for the debtor or guarantor.</p> <p>Note that subordination agreements may be required even if the current security agreement does not extend to all of the collateral described in the registration.</p> <p>.3 Office of the Superintendent of Bankruptcy (Innovation, Science and Economic Development Canada).</p> <p>.4 Sheriff’s offices for executions.</p> <p>.5 Canadian Securities Registration Systems for security under <i>Bank Act</i>, s. 427.</p> <p>.6 Court registries in the regions in which the debtor does business.</p>					

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<p>.7 Copies of birth certificates, passports, driver’s licences, and certificates of Canadian citizenship to prove individual debtor names. Be sure to get the full legal name or consider multiple searches in cases where there may be more than one name.</p> <p>.8 Vehicle Records Department of ICBC.</p> <p>.9 Transport Canada Ships Registry.</p> <p>.10 Canada Revenue Agency (“CRA”).</p> <p> (a) Taxation re corporate tax, payroll, source deductions, etc.</p> <p> (b) Customs and Excise re GST, confirm registration, registration number, and status of payments.</p> <p>.11 WorkSafeBC.</p> <p>.12 Corporation capital tax (contact Ministry of Finance). Corporation capital tax is no longer applicable but liability for outstanding tax can still exist.</p> <p>.13 Ministry of Forest, Lands, Natural Resource Operations and Rural Development.</p> <p>.14 Crown-Indigenous Relations and Northern Affairs Canada (“CIRNAC”).</p> <p>.15 Environmental agencies (e.g., see chapters 13 to 15 of <i>Due Diligence Deskbook</i> (CLEBC, 1994–)). Also, recommend that the secured party obtain an environmental report from a qualified environmental consultant.</p> <p>.16 Manufactured Home Registry.</p> <p>.17 Transport Canada (for aircraft).</p> <p>.18 International Registry under the Cape Town Convention (for aircraft objects within the meaning of the <i>Convention on International Interests in Mobile Equipment</i> and the <i>Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment</i>).</p> <p>.19 Federal intellectual property offices (if the collateral includes trademarks, patents, or copyrights).</p> <p>.20 Searches outside British Columbia (if collateral, residence, place of business, or chief executive office of the debtor is outside British Columbia, or the debtor is incorporated or formed outside British Columbia).</p> <p>.21 Corporations Canada (for rolling stock, see <i>Canada Transportation Act</i>, S.C. 1996, c. 10, ss. 104 and 105).</p> <p>(DEB) Also consider searching:</p> <ul style="list-style-type: none"> • LTO (including copies of all charges, leases, etc.; consider searching LOTR as well—see “<i>Land Owner Transparency Act</i>” under “New developments” in this checklist). • Municipal and provincial offices regarding property taxes, zoning, permits and licences, waste management, elevators, etc. • Water rights branches. 					

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<p>3.6 Some of these searches require the prior written consent of the entity being searched (e.g., tax searches) and can take four weeks or more to be produced (e.g., CRA and some environmental and municipal searches). Discuss with the client the purpose, cost, and timing of production of search results to determine which of the above are appropriate to your client.</p> <p>3.7 Discuss results of searches with the client, and finalize instructions as to, e.g.:</p> <ul style="list-style-type: none"> .1 Any discrepancies in descriptions. .2 Disposition of existing charges. .3 Modification of security requirements. .4 Priority agreements required, and their availability. .5 Consents and notices required (especially from government authorities and prior secured parties). .6 Other security documents required (land mortgage, ship's mortgage, documents required for property that is not or may not be covered by PPSA, etc.) (see PPSA, s. 4). <p>3.8 Make arrangements for funding the loan (where not handled by the lender), purchase payout, and discharge of prior encumbrances on appropriate undertakings, if necessary.</p>					
<p>4. PREPARING THE DOCUMENTS</p>					
<p>4.1 Obtain or prepare any required supplementary documents, such as:</p> <ul style="list-style-type: none"> .1 For corporate parties: <ul style="list-style-type: none"> (a) Opinion letters from the debtor's and guarantor's lawyers, to include matters such as: corporate status; capacity and power; good standing; incumbency; authorization for borrowing of money or giving of guarantee; authorization, execution, and delivery of the commitment letter, security agreement, and any other security documents being provided. (b) Directors' resolutions and shareholders' resolution, if required. (c) If financial assistance is being provided by the debtor and for the guarantor, which are British Columbia companies, a certificate or other evidence to the effect that the granting of the security interest is in the best interests of the debtor and the reasons for that conclusion (see item 2.7 in this checklist), and that the debtor is not, and will not be rendered, insolvent (this is good practice even though the former <i>Company Act</i> restrictions on giving financial assistance are no longer in effect). Under the <i>BCA</i>, s. 195, British Columbia companies have the power to provide financial assistance to any person for any purpose, but are required to notify their shareholders of the financial assistance if and when required under the <i>BCA</i>. However, s. 195 does not exclude the common-law business judgment rule requirements, and evidence <ul style="list-style-type: none"> should be obtained and set out in the directors' resolution authorizing the financial assistance. .2 Certificate of officer or statutory declaration as to the location of the assets, existence of any other charges on the assets, any negative covenants or restrictions on capacity, nature of the business, the place where the business is carried out, and other factual matters. 					

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<p>.3 Certificate of insurance together with a certified copy of the insurance policy showing the loss payable to the lender, if the lender so requires.</p> <p>.4 Consents (e.g., from the lessor, prior secured parties or other holders of prior charges, CIRNAC, the government holding any accounts). Coordinate any required consents with the debtor’s lawyers. If government debts are part of the collateral, review and comply with the applicable statutory provisions governing assignment of Crown debts.</p> <p>.5 Priority agreements.</p> <p>.6 Discharges.</p> <p>.7 Building and development permits, confirmation of zoning, outstanding work orders (if land is involved).</p> <p>.8 Obtain additional supplementary documents, such as:</p> <p>(a) If the standard mortgage clause is requested, review it carefully for its applicability to the transaction.</p> <p>(b) Agreement from the landlord, prior secured parties, or the vendor under an agreement for sale, agreeing that notice of default will be given to the holder and that the holder may rectify the default during the period of notice.</p> <p>(c) Surveyor’s certificate.</p> <p>(d) Tax certificate.</p> <p>4.2 Prepare required documents, such as:</p> <p>.1 Security agreements.</p> <p>.2 Guarantees and postponements of claim (note that they may contain security interests that should be registered), or consider registrations against guarantor as debtor within the meaning of the term in the <i>PPSA</i>.</p> <p>.3 <i>Bank Act</i>, s. 427 security. Forward notice of intention to grant security for execution. Ensure that the notice of intention is dated and filed at the appropriate Canadian Securities Registration Systems office before the date on which s. 427 security is executed.</p> <p>.4 Promissory note.</p> <p>.5 Loan agreement.</p> <p>.6 <i>PPSA</i> financing statement(s). Refer to the Personal Property Security Regulation, and the BC Online User Guides at www.bconline.gov.bc.ca.</p> <p>.7 LTO notices for fixtures or crops (see <i>PPSA</i>, s. 49).</p> <p>.8 Consider registrations outside British Columbia (e.g., if assets, or the residence, or a place of business, or the chief executive office of the debtor are located elsewhere).</p> <p>.9 Assignment of insurance policies, as required.</p> <p>.10 Mortgages of land, ship’s mortgages, etc. (to be duly registered).</p> <p>.11 Assignment of accounts (general or specific, to secure all indebtedness or a specific sum).</p>					

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<p>.12 Pledge or hypothecation of shares. Generally, such pledge is also accompanied by a power of attorney to transfer the shares and actual delivery of share certificates. If the shares are in a private company, a directors’ resolution authorizing the transfer of the shares to the secured party or a purchaser of the shares should be obtained. Share certificates, issued in the name of the secured party, constitute the best security. Relative bargaining power and the amount of the loan will affect whether the certificates remain in the name of the debtor or the secured party.</p> <p>.13 Control agreement over investment property (which includes shares, whether certificated or uncertificated, security entitlements, securities accounts, futures contracts, or futures accounts). See the <i>Securities Transfer Act</i> (the “<i>STA</i>”), S.B.C. 2007, c. 10, and the numerous amendments made by it to the <i>PPSA</i>.</p> <p>(DEB) Prepare additional required documents, such as:</p> <ul style="list-style-type: none"> • Instrument of pledge of the debenture, if required. • Land Title Form B, if the debenture creates a fixed charge on land. (Floating charges on land—registration in the Personal Property Registry constitutes registration under the <i>Land Title Act</i>, but does not give the same level of priority protection.) 					
<p>5. DRAFTING THE SECURITY AGREEMENT</p>					
<p>5.1 Prepare an outline of the security agreement, or of the express clauses to be added to the standard form of security agreement. See the SECURITY AGREEMENT DRAFTING (B-13) checklist.</p>					
<p>5.2 Prepare the first draft.</p>					
<p>5.3 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 necessary corrections and prepare the second draft.</p>					
<p>5.4 Go over the second draft with the client, or send it to the client with a request that the client review it and note any questions or changes. Discuss any changes with the client.</p>					
<p>5.5 Make any changes required to the second draft and send copies to the debtor’s lawyer for comment. Review any changes with the client.</p>					
<p>5.6 Prepare the final agreement and arrange for signing.</p>					
<p>(DEB) If the debenture charges land, use a filed standard form of debenture/mortgage, identified by registration number, if available and appropriate.</p> <ul style="list-style-type: none"> • If standard mortgage terms need modification, or none exist, prepare the express terms. • If the debenture charges land, ensure that Form B is prepared (note: e-filing is mandatory; see the MORTGAGE PROCEDURE (F-2) checklist). If the debenture or security agreement includes a mortgage or floating charge over land, ensure that documents are executed in dark ink and in the form required by the LTO. 					

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<p>6. CLOSING THE TRANSACTION</p> <p>6.1 Register the financing statement(s) electronically in accordance with <i>PPSA</i> regulations, if not already done (when in doubt, register against all known names of, or used by, the debtor).</p> <p>6.2 Register international interest in an aircraft object at the International Registry under the Cape Town Convention in accordance with the <i>Convention on International Interests in Mobile Equipment</i> and the <i>Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment</i>, as required.</p> <p>6.3 Ensure proper execution of all documents.</p> <p>(DEB) Ensure proper execution of debenture:</p> <ul style="list-style-type: none"> • Authorized signatory and proof of execution, if appropriate. • Comply with LTO execution requirements, if applicable (e.g., dark ink and solicitor certification). <p>6.4 Check opinion letters.</p> <p>6.5 Determine whether there is a priority agreement or postponement that creates a security interest (<i>PPSA</i>, s. 40). Registration is required and not merely optional where a security interest is created. Registration by way of a financing change statement amending the subordinating creditor’s financing statement is optional but recommended where the subordinating creditor holds a <i>PPSA</i> registration (obtain authorization from that creditor before changing its registration).</p> <p>6.6 Send a copy of the printed document evidencing the registration to each debtor within 20 days after registration (<i>PPSA</i>, s. 43(15)), unless the debtor has waived, in writing, the right to receive a statement.</p> <p>6.7 Ensure the debtor receives a copy of the security agreement within 10 days after execution (<i>PPSA</i>, s. 11).</p> <p>6.8 Review the <i>PPSA</i> closely as to PMSI procedure and take all necessary steps to perfect PMSIs (<i>PPSA</i>, s. 34).</p> <p>6.9 Conduct all necessary post-registration searches.</p> <p>6.10 Prepare an opinion letter to the client. (In respect of personal property, do not express opinions on title, perfection, or priority. Do not express priority opinions on floating charges on land. Obtain and review copies of the opinion letters prepared by the Solicitors’ Legal Opinions Committee of British Columbia available through the Law Society website: www.lawsociety.bc.ca/support-and-resources-for-lawyers/your-practice/solicitors-legal-opinions/; see <i>Advising British Columbia Businesses</i> (CLEBC, 2006–), chapter 7 (Legal Opinions).</p> <p>6.11 Handle, or advise the client regarding, disbursement of funds on the loan disbursement date.</p> <p>(DEB) File documents as soon as possible:</p> <ul style="list-style-type: none"> • Where the debenture includes a fixed charge against land, register Form B in the appropriate LTO (note: e-filing is mandatory; see the MORTGAGE PROCEDURE (F-2) checklist) with the debenture as express mortgage terms (unless Form B refers to filed standard mortgage terms). 					

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<ul style="list-style-type: none"> • Where the debenture includes a charge against personal property or a floating charge on land, register a financing statement with the appropriate collateral description in the Personal Property Registry. Ensure serial-numbered goods are properly described in the registration, in compliance with the <i>PPSA</i>. • Consider and make any other registrations required (e.g., <i>PPSA</i>, fixtures notice in the LTO, priority agreement, financing statements in respect of guarantee containing assignment of claims) in the LTO, Personal Property Registry, or the International Registry under the Cape Town Convention in accordance with the <i>Convention on International Interests in Mobile Equipment</i> and the <i>Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment</i>, as required. • Conduct all necessary post-registration searches. Order a state of title certificate respecting real property, if applicable. <p>7. CLOSING THE FILE</p> <p>7.1 Prepare a reporting letter and account as soon as practicable after closing. Include copies of relevant documents, details of registration, and details regarding your searches. Draw the client’s attention to:</p> <ul style="list-style-type: none"> .1 Expiry of registration under the <i>PPSA</i>. Confirm who will make a diary entry regarding expiry of registrations. Generally, the client should take responsibility for any renewal of registrations. .2 Necessity to file financing change statements if: <ul style="list-style-type: none"> (a) The debtor changes its name, transfers all or part of the collateral, or transfers its interest, although the <i>PPSA</i> does not require this to be done. (b) Registration marks or serial numbers are changed, or serial-numbered goods are added to the collateral. (c) Collateral described as inventory in the registration ceases to be used as inventory. .3 Fact that certain parties may demand information regarding the transaction and the security agreement, the secured party’s obligation to respond to such demands, and the consequences of failing to respond (<i>PPSA</i>, s. 18). .4 Fact that the client must perfect as to proceeds of a different kind and with serial numbers. .5 Need to re-register promptly if registration is discharged without authority. <p>7.2 Send copies of relevant documents, including document prints, verifying <i>PPSA</i> registrations and final search to the debtor’s lawyer.</p> <p>(DEB) When the state of title certificate is received from the relevant LTO, send a final opinion letter to the client.</p> <p>7.3 Close the file. See the CLIENT FILE OPENING AND CLOSING (A-2) checklist.</p>					