

## INTRODUCTION

**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. The checklist is current to September 4, 2024.

### Key instructions for use of checklist:

- **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.

## LEGEND



Checkbox



Important Reminder



Deadline or Limitation Date

## NEW DEVELOPMENTS

- **Investment Canada Act.** Recent amendments to the *Investment Canada Act*, R.S.C. 1985, c. 28 (1st Supp.) and changes to policy announced by the Minister of Innovation, Science and Industry (the “Minister”) continue to address changing threats that can arise from foreign investment.
- **Modernization.** *An Act to Amend the Investment Canada Act*, S.C. 2024, c. 4 received Royal Assent on March 22, 2024, with amendments coming into force September 3, 2024. The amendments further the Minister’s ability to detect, review, and restrict foreign investments that are potentially injurious to Canadian national security.
- **Investment digital media sector.** Foreign investors and Canadian businesses in the investment digital media sector (the “IDM sector”) must review their investment plans for potential connections to entities owned or influenced by hostile foreign states and consult with Innovation, Science and Economic Development Canada’s Investment Review Division at least 45 days before implementing any investment. Foreign investors in Canada’s IDM sector must ensure their stringent undertaking and possible reviews for net benefit by the Minister of Canadian Heritage, focusing on maintaining Canadian control and cultural expression.

- **Mandatory disclosure regime to report transactions.** Enhanced mandatory disclosure rules under ss. 237.3 to 237.4 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) consist of changes to the existing reportable transaction rules and a new rule to report “notifiable transactions”. These rules apply to transactions occurring after June 21, 2023. Members of the legal profession are caught by the rules through the definition of an “advisor” and are therefore exposed to the possibility of substantial penalties. Legal professionals are currently exempt from the rules pending determination of the Federation of Law Societies of Canada’s challenge to the constitutionality of these rules on the grounds that they infringe the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), c. 11 (specifically, that the rules create potential conflicts of interest between legal professionals and their clients). Other parties, such as clients and accountants, are not exempt from the rules. Lawyers should consider advising their clients to consult with accountants and other professionals, such as tax counsel, on their obligations as well as updating their reporting correspondence.
- **Amendments to the *Land Title Act* and *Property Law Act*.** The *Land Title and Property Law Amendment Act, 2024*, S.B.C. 2024, c. 9 came into force May 21, 2024, amending the *Land Title Act*, R.S.B.C. 1996, c. 250 and the *Property Law Act*, R.S.B.C. 1996, c. 377. The amendments recognize the power and capacity of a First Nation to hold, acquire, and dispose of land in the name of the First Nation as owner and register its ownership in the land title office in its First Nation name.
- ***Land Owner Transparency Act*.** The *Land Owner Transparency Act*, S.B.C. 2019, c. 23 (the “*LOTA*”) requires a transparency declaration, or report (if applicable), to be filed with the Land Owner Transparency Registry (the “*LOTR*”) any time an application is made to register or transfer an interest in land under the *Land Title Act*, R.S.B.C. 1996, c. 250. A reporting body under the *LOTA*—which includes most corporations, trusts, and partnerships, subject to limited exceptions—must file a transparency report any time there is a change in interest holders or beneficial owners, even if legal title is not transferred. Amendments to the *LOTA* came into effect November 20, 2023 and include new definitions for “Surveyor of Taxes” and “transferee”. The amendments are to enhance the accuracy and completeness of transparency declarations and provide the ability to correct previously filed transparency declarations (s. 10.2), particularly where information was incorrect, or a reporting body was omitted (s. 15.2). Additionally, reporting bodies are now required to file a transparency report within two months after receiving a notification from the Surveyor of Taxes regarding a revested property (s. 15.1). 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 *Residential Real Estate Conference 2020* (CLEBC, 2020), and R. Danakody and T. Norman, “Land Owner Transparency Registry (LOTR)” in *Real Estate Development Update 2021* (CLEBC, 2021), available through CLEBC Courses on Demand.
- **Transparency register.** Private companies incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57 must create and maintain a “transparency register” of information about “significant individuals” (as defined by s. 119.11 of the *Business Corporations Act*). Consult the *Business Corporations Act* and British Columbia government websites to confirm compliance. The *Business Corporations Amendment Act, 2023*, S.B.C. 2023, c. 20 will introduce a new corporate transparency registry and transparency requirements by 2025.

## OF NOTE

- **Aboriginal law.** Special considerations apply to security agreements pertaining to “reserve” lands or the personal property belonging to a First Nations or Indigenous person (pursuant to the *Indian Act*, R.S.C. 1985, c. I-5). The Framework Agreement on First Nation Land Management (the “Framework Agreement”) was ratified as the central authority by the *Framework Agreement on First Nation Land Management Act*, S.C. 2022, c. 19, s. 121, which came into force on December 15, 2022. The Framework Agreement recognizes First Nations’ inherent right to govern their lands, and signatory First Nations assume the administration and law-making authority over their lands. If a security agreement involves reserve lands (pursuant to the *Indian Act*), 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 on the “Practice Areas” section of the Continuing Legal Education Society of British Columbia website ([www.cle.bc.ca](http://www.cle.bc.ca)) and in other CLEBC publications.
- **Money laundering—unexplained wealth orders.** The Director of Civil Forfeiture has sought unexplained wealth orders to address common money laundering techniques (such as hiding assets with family members or associates) and target the wealth of organized crime.
- **Money laundering—companies, trusts, and other entities.** 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 (*BC Code* rules 3.2-7 and 3.2-8 and Law Society Rules 3-103(4), 3-109, and 3-110). See the anti-money laundering resources on the Law Society’s “Client ID & Verification” resources webpage, including: “Source of Money FAQs”; “Risk Assessment Case Studies for the Legal Profession”; “Red Flags Quick Reference Guide”; “Risk Advisories for the Legal Profession”; “Forming Companies and Other Structures—Managing the Risk”; and the Discipline Advisories (an updated list can be found at [www.lawsociety.bc.ca/for-lawyers/discipline-advisories/](http://www.lawsociety.bc.ca/for-lawyers/discipline-advisories/)), which include topics such as Client ID & Verification, Country/geographic risk, and Private lending. Lawyers may contact a Law Society practice advisor at [practiceadvice@lsbc.org](mailto:practiceadvice@lsbc.org) for a consultation about the applicable *BC Code* rules and Law Society Rules and obtain guidance.
- **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.
- **Additional resources.** For more information about security agreements, see *British Columbia Personal Property Security Act Practice Manual* (especially the SECURED TRANSACTION checklist) (CLEBC, 1995–); *Due Diligence Deskbook* (CLEBC, 1994–); *Real Estate Financing: Annotated Precedents* (CLEBC, 1994–); *Priorities—2013*, course materials (CLEBC, 2013); *Priorities—2009*, course materials (CLEBC, 2009); *Advising British Columbia Businesses* (CLEBC, 2006–); and *British Columbia Creditors’ Remedies: An Annotated Guide*, 2nd ed. (CLEBC, 2020–).



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| <b>1. INITIAL CONTACT</b> |   |                          |
|---------------------------|---|--------------------------|
| 1.1                       | Arrange the initial interview.  | <input type="checkbox"/> |
| 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.                | <input type="checkbox"/> |
| 1.3                       | Conduct a conflicts of interest check. Refer to the CLIENT FILE OPENING AND CLOSING (A-2) checklist.  | <input type="checkbox"/> |
| 1.4                       | Confirm compliance with Law Society Rules 3-98 to 3-110 for client identification and verification and the source of money for financial transactions. Complete the CLIENT IDENTIFICATION, VERIFICATION, AND SOURCE OF MONEY (A-1) checklist. Consider periodic monitoring requirements (Rule 3-110). | <input type="checkbox"/> |

| <b>2. INITIAL INTERVIEW</b> |   |                          |
|-----------------------------|---|--------------------------|
| 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.   | <input type="checkbox"/> |
| 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.  | <input type="checkbox"/> |
| 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. | <input type="checkbox"/> |
| 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.   | <input type="checkbox"/> |
| 2.5                         | Discuss the client's objectives, the anticipated closing date, and the background of the transaction.   | <input type="checkbox"/> |

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| 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.   | <input type="checkbox"/> |
| 2.7 | Collect information and discuss the provisions of the security agreement, referring to the SECURITY AGREEMENT DRAFTING (B-13) checklist. Include:   | <input type="checkbox"/> |
|     | .1 Description and location of the collateral and location of the places of (residence or) business and chief executive office of the debtors:  |                          |
|     | (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).   |                          |
|     | (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).  |                          |
|     | (c) Identify property that may not be personal property governed by PPSA, s. 4 (e.g., intellectual property and life insurance policies).   |                          |
|     | (d) If the collateral includes land, recommend a registered mortgage instead of a floating charge.  |                          |
|     | (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 the <i>Convention</i> and <i>Protocol</i> . The <i>Convention</i> and <i>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. |                          |
|     | (f) If the collateral includes consumer goods (see PPSA, s. 1(1)), consider the effect of PPSA, s. 67. Generally, avoid having the debtor grant security over consumer goods and other collateral as security for the same indebtedness.  |                          |
|     | .2 Amount of loan: revolving, non-revolving.  |                          |
|     | .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 (currently 35% APR for new agreements after June 22, 2023).   |                          |
|     | .4 Repayment terms.   |                          |
|     | .5 Guarantors (limited or unlimited, joint and several, several, rateable).   |                          |
|     | .6 Special covenants.   |                          |
|     | .7 Loan disbursement date.  |                          |
|     | .8 Financial statements.  |                          |
|     | .9 Purpose of loan.   |                          |

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|       | .10 Whether the security agreement is also to secure indirect obligations of the debtor to the client, e.g., as a guarantor.  |   |
|       | .11 Consider or obtain:   |   |
|       | (a) Legal description of and interests in real property.  |   |
|       | (b) Names of vessels (registered or licensed); whether a marine mortgage is required.   |   |
|       | (c) Descriptions of other assets (e.g., timber interests, water rights, aircraft, assignments of contracts; if crops, when planted and when “growing”).   |   |
|       | .12 Whether collateral will be commingled.  |   |
|       | .13 Accessions.   |   |
| 2.8   | Determine the most appropriate type of security agreement (e.g., general, specific, site-specific, inventory, receivables).   | <input type="checkbox"/>  |
| (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.)   |    |
| 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. | <input type="checkbox"/>  |
| 2.10  | Consider and obtain instructions:   | <input type="checkbox"/>  |
|       | .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?  |   |



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| 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).   |  |
| 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. | <input type="checkbox"/>  |
| 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)).   |  |
| 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.   | <input type="checkbox"/>  |
| 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.  | <input type="checkbox"/>  |
| 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 <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> ).   | <input type="checkbox"/>  |

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| <b>3.</b> | <b>AFTER THE INITIAL INTERVIEW</b>  |                          |
| 3.1       | Confirm your retainer. Refer to the CLIENT FILE OPENING AND CLOSING (A-2) checklist.  | <input type="checkbox"/> |
| 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).   | <input type="checkbox"/> |
| 3.3       | If the client is a company, verify who has the authority to give instructions ( <i>Code of Professional Conduct for British Columbia</i> (the "BC Code") rule 3.2-3 Commentary [1]). Consider having a directors' resolution confirm your retainer and giving one officer or director the authority to instruct you.  | <input type="checkbox"/> |
| 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 seek 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>BC Code</i> , rule 7.2-9. | <input type="checkbox"/> |



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| 3.5 | Conduct relevant searches (and obtain and review copies of relevant documents), such as:   | <input type="checkbox"/> |
|     | .1 Company search on corporate parties: debtor, guarantor, and, where necessary, secured party. Include:   |                          |
|     | (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:  |                          |
|     | (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.  |                          |
|     | (ii) Power to provide financial assistance, if applicable. Under s. 195 of the <i>BCA</i> , 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> .   |                          |
|     | (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)?   |                          |
|     | (iv) Lender's power to lend. Under s. 195 of the <i>BCA</i> , 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). |                          |
|     | (v) Disclosure requirements applicable to the lender.  |                          |
|     | (vi) Manner of executing documents (signing authority, use of seal).   |                          |





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|  | .2 Personal Property Registry for security agreements registered.   |  |
|  | (a) Search for the debtor and guarantors under their full current legal names, any business names, aliases, former names, predecessor names, and similar names. Search under the serial number for each serial-numbered good (see the <i>Personal Property Security Regulation</i> , s. 1, for the definition of “serial numbered goods,” and s. 10 for the definition of “serial number”). |  |
|  | (b) Consider obtaining copies of registered security agreements from relevant secured parties ( <i>PPSA</i> , s. 18 demand).  |  |
|  | (i) If your client is not an appropriate party, obtain execution of an s. 18 demand by the debtor or guarantor; or  |  |
|  | (ii) Get certified copies of security agreements from the lawyer for the debtor or guarantor.   |  |
|  | 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.   |  |
|  | .3 Office of the Superintendent of Bankruptcy (Innovation, Science and Economic Development Canada).  |  |
|  | .4 Sheriff’s offices for executions.  |  |
|  | .5 Canadian Securities Registration Systems for security under <i>Bank Act</i> , s. 427.  |  |
|  | .6 Court registries in the regions in which the debtor does business.   |  |
|  | .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.  |  |
|  | .8 Vehicle Records Department of ICBC.  |  |
|  | .9 Transport Canada Ships Registry.   |  |
|  | .10 Canada Revenue Agency (“CRA”).  |  |
|  | (a) Taxation re corporate tax, payroll, source deductions, etc.   |  |
|  | (b) Customs and Excise re GST, confirm registration, registration number, and status of payments.   |  |
|  | .11 WorkSafeBC.   |  |
|  | .12 Corporation capital tax (contact Ministry of Finance). Corporation capital tax is no longer applicable but liability for outstanding tax can still exist.   |  |
|  | .13 Ministry of Forests, Lands, Natural Resource and Rural Development.   |  |
|  | .14 Crown-Indigenous Relations and Northern Affairs Canada (“CIRNAC”).  |  |
|  | .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.  |  |



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|              | .16 Manufactured Home Registry.  |   |
|              | .17 Transport Canada (for aircraft).   |   |
|              | .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> ).   |   |
|              | .19 Federal intellectual property offices (if the collateral includes trademarks, patents, or copyrights).   |   |
|              | .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).  |   |
|              | .21 Corporations Canada (for rolling stock, see <i>Canada Transportation Act</i> , S.C. 1996, c. 10, ss. 104 and 105).   |   |
| <b>(DEB)</b> | Also consider searching: <ul style="list-style-type: none"> <li>• 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).</li> <li>• Municipal and provincial offices regarding property taxes, zoning, permits and licences, waste management, elevators, etc.</li> <li>• Water rights branches.</li> </ul> |    |
| 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.   |  |
| 3.7          | Discuss results of searches with the client, and finalize instructions as to, e.g.:  | <input type="checkbox"/>  |
|              | .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 <i>PPSA</i> , etc.) (see <i>PPSA</i> , s. 4).   |   |
| 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.  | <input type="checkbox"/>  |







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|-----------|---|--------------------------|
| <b>4.</b> | <b>PREPARING THE DOCUMENTS</b>  |                          |
| 4.1       | Obtain or prepare any required supplementary documents, such as:  | <input type="checkbox"/> |
|           | .1 For corporate parties:   |                          |
|           | (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 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.  |                          |
|           | .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.   |                          |
|           | .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.  |                          |
|           | .5 Priority agreements and/or landlord waivers.   |                          |
|           | .6 Discharges.  |                          |
|           | .7 Building and development permits, confirmation of zoning, outstanding work orders (if land is involved).   |                          |
|           | .8 Obtain additional supplementary documents, such as:  |                          |
|           | (a) If the standard mortgage clause is requested, review it carefully for its applicability to the transaction.   |                          |


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|     | (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.   |  |
|     | (c) Surveyor's certificate.   |   |
|     | (d) Tax certificate.  |   |
| 4.2 | Prepare required documents, such as:  | <input type="checkbox"/>  |
|     | .1 Security agreements.   |   |
|     | .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> .   |   |
|     | .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.  |  |
|     | .4 Promissory note.   |   |
|     | .5 Loan agreement.  |   |
|     | .6 <i>PPSA</i> financing statement(s). Refer to the Personal Property Security Regulation, and the BC Online User Guides at <a href="http://www.bconline.gov.bc.ca">www.bconline.gov.bc.ca</a> .  |   |
|     | .7 LTO notices for fixtures or crops (see <i>PPSA</i> , ss. 36, 37, 49).  |   |
|     | .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).  |   |
|     | .9 Assignment of insurance policies, as required.   |   |
|     | .10 Mortgages of land, ship's mortgages, etc. (to be duly registered).  |   |
|     | .11 Assignment of accounts (general or specific, to secure all indebtedness or a specific sum).   |   |
|     | .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. |   |
|     | .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> .  |   |




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| <b>(DEB)</b> | Prepare additional required documents, such as:  |  |
|              | <ul style="list-style-type: none"> <li>Instrument of pledge of the debenture, if required.</li> </ul>  |   |
|              | <ul style="list-style-type: none"> <li>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.)</li> </ul> |   |

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| <b>5.</b>    | <b>DRAFTING THE SECURITY AGREEMENT</b>  |   |
| 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.   | <input type="checkbox"/>  |
| 5.2          | Prepare the first draft.  | <input type="checkbox"/>  |
| 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.   | <input type="checkbox"/>  |
| 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.   | <input type="checkbox"/>  |
| 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.   | <input type="checkbox"/>  |
| 5.6          | Prepare the final agreement and arrange for signing.  | <input type="checkbox"/>  |
| <b>(DEB)</b> | If the debenture charges land, use a filed standard form of debenture/mortgage, identified by registration number, if available and appropriate.  |  |
|              | <ul style="list-style-type: none"> <li>If standard mortgage terms need modification, or none exist, prepare the express terms.</li> </ul>   |   |
|              | <ul style="list-style-type: none"> <li>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.</li> </ul> |   |

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| <b>6.</b> | <b>CLOSING THE TRANSACTION</b>   |   |
| 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).   |  |
| 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. |  |

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| 6.3          | Ensure proper execution of all documents.   | <input type="checkbox"/>  |
| <b>(DEB)</b> | Ensure proper execution of debenture:   |    |
|              | <ul style="list-style-type: none"> <li>Authorized signatory and proof of execution, if appropriate.</li> </ul>  |   |
|              | <ul style="list-style-type: none"> <li>Comply with LTO execution requirements, if applicable (e.g., dark ink and solicitor certification).</li> </ul>   |   |
| 6.4          | Check opinion letters.  | <input type="checkbox"/>  |
| 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).   |    |
| 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.  |    |
| 6.7          | Ensure the debtor receives a copy of the security agreement within 10 days after execution ( <i>PPSA</i> , s. 11).  |    |
| 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).   | <input type="checkbox"/>  |
| 6.9          | Conduct all necessary post-registration searches.   | <input type="checkbox"/>  |
| 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 CLEBC's website: <a href="https://www.cle.bc.ca/solicitors-legal-opinions/">https://www.cle.bc.ca/solicitors-legal-opinions/</a> ; see <i>Advising British Columbia Businesses</i> (CLEBC, 2006–), chapter 7 (Legal Opinions). | <input type="checkbox"/>  |
| 6.11         | Handle, or advise the client regarding, disbursement of funds on the loan disbursement date.  | <input type="checkbox"/>  |
| <b>(DEB)</b> | File documents as soon as possible:   |   |
|              | <ul style="list-style-type: none"> <li>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).</li> </ul>  |  |
|              | <ul style="list-style-type: none"> <li>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>.</li> </ul>  |  |

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|  | <ul style="list-style-type: none"> <li>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.</li> </ul> |  |
|  | <ul style="list-style-type: none"> <li>Conduct all necessary post-registration searches. Order a state of title certificate respecting real property, if applicable.</li> </ul>  |   |

| <b>7. CLOSING THE FILE</b> |   |   |
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| 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:                        | <input type="checkbox"/>  |
|                            | .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:  |    |
|                            | (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.  |  |
| 7.2                        | Send copies of relevant documents, including document prints, verifying <i>PPSA</i> registrations and final search to the debtor's lawyer.  | <input type="checkbox"/>  |
| <b>(DEB)</b>               | When the state of title certificate is received from the relevant LTO, send a final opinion letter to the client.   |  |
| 7.3                        | Close the file. See the CLIENT FILE OPENING AND CLOSING (A-2) checklist.  | <input type="checkbox"/>  |