

ACTION TO BE CONSIDERED	NOTES
<p style="text-align: center;">INTRODUCTION</p> <p>Purpose and currency of checklist. This checklist is designed to be used with the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1) and SHARE PURCHASE PROCEDURE (B-3) checklists. The provisions suggested in this checklist must be considered in relation to the particular facts in the matter at hand and augmented and revised as appropriate. The checklist is current to September 1, 2019.</p> <p>New developments:</p> <ul style="list-style-type: none"> • Introduction of transparency register. The <i>Business Corporations Amendment Act, 2019</i> (Bill 24) received Royal Assent on May 16, 2019 and comes into force by regulation. Bill 24 requires private companies incorporated under the <i>Business Corporations Act</i>, S.B.C. 2002, c. 57, to create and maintain a “transparency register” of information about “significant individuals”. Individuals will be considered “significant individuals” if: they directly or indirectly own, or indirectly control 25% or more of the issued shares of the company, or shares that carry 25% or more of the voting rights of the company; or they are able to exercise rights or influence, directly or indirectly, that would result in the election, appointment or removal of the majority of the company’s directors. If two or more individuals meet the above criteria by jointly holding the prescribed interest or right, then each will be deemed a “significant individual”. The transparency register must contain the following information for each significant individual: full name, date of birth, and last known address; whether or not the individual is a Canadian citizen or permanent resident of Canada and, if not, a list of every country of which the individual is a citizen; whether or not the individual is a resident of Canada for tax purposes; the date on which the individual became or ceased to be a significant individual; a description of how the individual meets the definition of a significant individual; and any further information that may be required by regulation. For more information, see www2.gov.bc.ca/gov/content/employment-business/business/bc-companies/bearer-share-certificate-transparency-register. • New record-keeping requirements under the Canada Business Corporations Act. Effective June 13, 2019, corporations incorporated under the <i>Canada Business Corporations Act</i>, R.S.C. 1985, c. C-44, will be required to create and maintain a new register of individuals with “significant control” over the corporation. The register must contain, among other things, the name, date of birth, last known address, and the jurisdiction of residence for tax purposes of each individual with significant control. For more information, see www.parl.ca/DocumentViewer/en/42-1/bill/C-86/royal-assent. • Law Society Rules: <ul style="list-style-type: none"> • 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 <i>Benchers’ Bulletin</i>, pp. 10 to 14, and the Fall <i>Benchers’ Bulletin</i>, pp. 14 to 17. For trust account questions, contact trustaccounting@lsbc.org or 604.697.5810. 	

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<ul style="list-style-type: none"> • 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. • The Law Society Rules are published at www.lawsociety.bc.ca/support-and-resources-for-lawyers/act-rules-and-code/law-society-rules. <p>Of note:</p> <ul style="list-style-type: none"> • 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 <i>Benchers’ Bulletin</i> 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 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 in regarding refund of the extra tax paid by a transferee who became a Canadian citizen or permanent resident within one year of the registration date. See also www2.gov.bc.ca/gov/content/taxes/property-taxes/property-transfer-tax/additional-property-transfer-tax. 	

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<ul style="list-style-type: none"> • Aboriginal law. Special considerations apply to businesses involving “Indians” and Indian “reserves” (both as defined in the <i>Indian Act</i>, R.S.C. 1985, c. I-5). While significant tax and other advantages may be available under the <i>Indian Act</i>, 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. • Additional resources. For further information about share purchase procedures, see <i>Advising British Columbia Businesses</i> (CLEBC, 2006–); <i>Buying and Selling a Business: Annotated Precedents</i> (CLEBC, 2000–); and the <i>Due Diligence Deskbook</i> (CLEBC, 1994–). <p style="text-align: center;">CONTENTS</p> <ol style="list-style-type: none"> 1. Initial Contact 2. Identification of Parties 3. Recitals 4. Definitions 5. Purchase Price and Sale 6. Vendor’s Representations and Warranties 7. Purchaser’s Representations and Warranties 8. Vendor’s Obligations—Prior to Closing 9. Conditions Precedent to Obligations of Purchaser 10. Conditions Precedent to Obligations of Vendor 11. Closing 12. Loss or Damage Prior to Closing 13. Vendor’s Indemnification 14. Vendor’s Obligations—Post Closing 15. General Provisions 16. Schedules <p style="text-align: center;">CHECKLIST</p> <ol style="list-style-type: none"> 1. INITIAL CONTACT <ol style="list-style-type: none"> 1.1 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. 2. IDENTIFICATION OF PARTIES <ol style="list-style-type: none"> 2.1 If the vendor is a limited company or other entity, consider whether the principals should be added as covenantors (usually dependent on the history and long-term (future) financial capability of the vendor; i.e., will the vendor retain any assets or operations after the sale?). 3. RECITALS <ol style="list-style-type: none"> 3.1 General statement of the legal relationship between, or roles of, the parties. 3.2 General statement of the factual background to the transaction. 	

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<p>4. DEFINITIONS</p> <p>4.1 Provide definitions for terms used throughout the agreement, including the scope and meaning of phrases such as “to the best of [one’s] knowledge”.</p> <p>5. PURCHASE PRICE AND SALE</p> <p>5.1 Mutual obligations of vendor to sell and purchaser to purchase shares.</p> <p>5.2 Note Law Society Rule 3-59 with respect to the restrictions on receiving cash and Rule 3-70 for records of cash transactions.</p> <p>5.3 Consider the following (non-exhaustive) structures for payment:</p> <p>.1 Deposit given on execution of agreement. Provision for increase of deposit to a certain dollar amount after all subjects removed, with deposit to be non-refundable but forming a part of the purchase price. Consider placing the deposit in an interest-bearing account with interest accruing to the purchaser’s credit (if long closing).</p> <p>.2 Fixed sum payable on closing (consider whether a pricing formula applies). If more than one purchaser, obligations to pay purchase price should be joint and several.</p> <p>.3 Fixed sum payable on closing, part of which is held in escrow to be offset against indemnities or breaches of representations and warranties, or is otherwise deferred. Consider tax ramifications of any proposal deferral. An escrow agent should be identified. Consider terms of escrow and responsibilities of agent.</p> <p>4. Fixed sum payable to vendor’s counsel on undertakings to pay out any security registered against the company or its assets.</p> <p>5.4 Manner and holding of payment.</p> <p>.1 Fixed sum on closing, drawn on a Canadian chartered bank and payable in Canadian funds:</p> <p>(a) Certified cheque.</p> <p>(b) Banker’s draft.</p> <p>(c) Lawyer’s trust cheque.</p> <p>(d) Wire transfer. (Note restrictions in Law Society Rules 3-64.1 and 3-64.2.)</p> <p>(e) Note Law Society Rule 3-59 with respect to the restrictions on receiving cash and Rule 3-70 for records of cash transactions.</p> <p>(f) Other.</p> <p>.2 Escrowed funds on deposit on closing in an interest-bearing trust account.</p> <p>5.5 If part of the purchase price is deferred, consider security in favour of the vendor pending payment of the deferred price (or where the transaction is otherwise vendor-financed) through restrictions on the conduct of the company’s business after closing, or other mechanisms. Many of these restrictions will also be relevant to the period between signing and closing, even if there is no deferral.</p> <p>.1 Company to continue operations as a separate business, in the ordinary course.</p>	

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<p>.2 Company to comply with all relevant laws in the jurisdiction in which the company carries on business.</p> <p>.3 Company to notify the vendor forthwith upon release of a “hazardous substance” (definition to be included) into the environment by the company, or any material change in the business or operations (adverse or otherwise).</p> <p>.4 Company to maintain adequate insurance coverage.</p> <p>.5 Company to make no commitments (by loan, guarantee, or other liability) increasing the company’s debt beyond a specified amount.</p> <p>.6 Maintain corporate goodwill on behalf of the purchaser.</p> <p>.7 Preserve relationships with suppliers, customers, employees, and others having dealings with the company.</p> <p>.8 Repair and maintain assets until the closing date, and no capital expenditures in excess of a specified amount.</p> <p>.9 Restrictions on the payment of dividends or other distributions.</p> <p>.10 Restrictions on salaries and bonuses.</p> <p>.11 Prohibitions against non-arm’s-length management fees.</p> <p>.12 Prohibitions on other non-arm’s-length transactions.</p> <p>.13 Prohibitions on reduction in working capital.</p> <p>.14 No redemption of issued shares.</p> <p>.15 No issuing of additional shares.</p> <p>.16 No alterations of constating documents such as memorandum, notice of articles, or articles.</p> <p>.17 No sale, encumbrance, or gift of corporate assets.</p> <p>.18 Shares to be held in escrow or pledged.</p> <p>.19 Right of vendor to inspect books and records as well as company premises.</p> <p>.20 Right of vendor to receive financial statements.</p> <p>.21 Right of vendor to receive notice of and attend shareholders’ meetings and directors’ meetings.</p> <p>.22 Right of vendor to have nominees sit on board of directors.</p> <p>.23 Mortgage on lands of purchaser including company, subject to compliance with <i>Business Corporations Act</i>, S.B.C. 2002, c. 57, s. 195.</p> <p>.24 General security agreement on assets of purchaser including company, subject to compliance with <i>Business Corporations Act</i>, s. 195.</p> <p>.25 Guarantees by third party.</p> <p>Note: many of these items may need to be qualified by the phrase “except in the ordinary course of business” or a materiality threshold, and may not be appropriate in the circumstances.</p>	

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<p>6. VENDOR'S REPRESENTATIONS AND WARRANTIES</p> <p>Some of these representations and warranties should be given both with respect to the vendor and the target company. Consider extending them to any subsidiaries or significant interests, such as partnerships and joint ventures.</p> <p>6.1 Corporate status.</p> <ul style="list-style-type: none"> .1 Valid incorporation. .2 Good standing. .3 Private, non-reporting company. .4 No business carried on outside province except as stated. .5 Compliance with extraprovincial and other applicable licensing, registration, or qualification requirements. .6 Constatng documents (such as memorandum, notice of articles, and articles) are unchanged since a specified date, and accurate copies are provided. .7 Constatng documents (such as memorandum, notice of articles, and articles) permit company to own its present assets, and to carry on its present business. <p>6.2 Capital structure.</p> <ul style="list-style-type: none"> .1 Number of authorized shares. <ul style="list-style-type: none"> (a) Common (par value or N.P.V. voting rights). (b) Preferred. .2 Number of issued shares. <ul style="list-style-type: none"> (a) Common. (b) Preferred. .3 Issued shares are fully paid and non-assessable. .4 The company has no other issued, or agreements to issue, securities, options, rights, etc. <p>6.3 Number of shares owned by the vendor.</p> <ul style="list-style-type: none"> .1 Common. .2 Preferred. <p>6.4 List of directors and officers of the company.</p> <p>6.5 Vendor's right to sell and perform obligations in accordance with the agreement.</p> <ul style="list-style-type: none"> .1 Good and marketable title, free and clear (consider whether this is appropriate for all assets, such as contracts). .2 Sale has been authorized by all necessary corporate action. .3 No encumbrances, except as set out in the agreement. .4 No contractual or regulatory consents, licences, permits or approvals required, except as set out in the agreement. .5 No options. 	

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<p>.6 No shareholders' agreements.</p> <p>.7 No beneficial interest of third parties.</p> <p>.8 No restrictions imposed by constating documents (such as memorandum, notice of articles, or articles).</p> <p>.9 No contrary court orders.</p> <p>.10 No triggering event has occurred under <i>Family Law Act</i>, S.B.C. 2011, c. 25, s. 81 (or, if applicable, the former legislation, <i>Family Relations Act</i>, R.S.B.C. 1996, c. 128, s. 56). Note that under the <i>Family Law Act</i>, the only triggering event would be the date of separation.</p> <p>.11 No other outstanding agreements or securities that carry the right to acquire shares.</p> <p>.12 Agreement is a legal, valid, and binding obligation of the vendor and the target company.</p> <p>6.6 Schedule of company assets.</p> <p>.1 Inventory.</p> <p>.2 Accounts receivable.</p> <p>.3 Real estate.</p> <p>.4 Leases, licences, and permits.</p> <p>.5 Machinery, equipment, and vehicles.</p> <p>.6 Furniture and accessories.</p> <p>.7 Intellectual property and intangibles (trade secrets, brand names, patents, etc.).</p> <p>.8 Material contracts.</p> <p>.9 Computer equipment (a separate class according to the <i>Income Tax Act</i>, R.S.C. 1985, c. 1 (5th Supp.)).</p> <p>.10 Buildings.</p> <p>(a) Located within the property of the company.</p> <p>(b) Built in accordance with all laws, particularly zoning.</p> <p>(c) In good repair.</p> <p>(d) Not subject to government work orders.</p> <p>(e) Company has no notice of non-compliance.</p> <p>(f) No encroachment on any right of way.</p> <p>(g) Vendor has no notice of an intention to expropriate property of the company or of any change in bylaws that would affect use of the property.</p> <p>6.7 Environmental matters.</p> <p>.1 Properties and buildings are free from hazardous substances (e.g., asbestos) and in compliance with all laws. Company has all permits and approvals.</p> <p>.2 No underground storage tanks exist on the properties.</p>	

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<p>.3 Company has handled, stored, treated, shipped, and disposed of hazardous substances in compliance with all laws.</p> <p>.4 Company has not had an environmental audit or assessment conducted with respect to the company or property owned by the company. (Consider contaminated sites legislation and possible audit.) No notice of violation, investigation, or potential responsibility for corrective action.</p> <p>.5 Consider other environmental matters, depending on the nature of the business and any potential risks (e.g., migration).</p> <p>6.8 Right of company to assets.</p> <p>.1 Good and marketable title (as in item 6.5.1, consider whether this is appropriate for all assets).</p> <p>.2 No liens or encumbrances, except as set out in agreement.</p> <p>(a) General security agreements.</p> <p>(b) Mortgages on land.</p> <p>(c) Debentures (both fixed and floating charge).</p> <p>(d) Assignments of book accounts.</p> <p>(e) Security under <i>Bank Act</i>, S.C. 1991, c. 46, s. 427.</p> <p>.3 No beneficial interest of third parties.</p> <p>.4 Right of company to its trade names, trademarks, and other intellectual property; no notice of infringement. Also consider more extensive intellectual property provisions where applicable to the business.</p> <p>.5 Vendor (or any of the directors, officers or shareholders, if a company, or relatives, if an individual) or another company do not own assets used by company (alternative to use of schedule).</p> <p>.6 All assets are used in the business; no other assets are necessary to operate the business.</p> <p>.7 No contracts that commit the company's production to third parties.</p> <p>6.9 Execution or performance of the agreement is not to result in:</p> <p>.1 Violation of any constating documents (such as memorandum, notice of articles, or articles) or any law, order, decree, statute, bylaw, or regulation applicable to the company or its assets.</p> <p>.2 Third party having right to terminate contractual or other rights of company.</p> <p>.3 Creation of liens or encumbrances on company assets.</p> <p>.4 Default under any agreement giving third-party security in company assets or rights against the company or its assets.</p> <p>.5 Crystallization of floating charge.</p> <p>.6 Any fees, duties, taxes, assessments, or other amounts relating to any assets of the company becoming due and payable.</p> <p>6.10 Full disclosure of transactions between the company and the vendor, the vendor's family, affiliated companies, directors, officers, shareholders, and other insiders (as applicable).</p> <p>.1 Employment contracts.</p>	

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<p>.2 Management contracts.</p> <p>.3 Other contracts (particularly, material contracts).</p> <p>.4 Debts of company to the vendor or insiders or these other parties.</p> <p>.5 Debts of vendor or insiders to the company or these other parties.</p> <p>.6 Payments to the vendor or insiders or these other parties authorized by the company, other than payments authorized pursuant to contracts listed in items 6.10.1, 6.10.2, and 6.10.3.</p> <p>6.11 Conduct of business.</p> <p>.1 Date of last authorization of dividends or other distribution.</p> <p>.2 Amount of total authorized capital expenditures, no expenditures, or commitments in excess of a specified limit since the date of financial statements.</p> <p>.3 No waiver or surrender of rights.</p> <p>.4 Incurred no obligations or liabilities and no premature payment of debts or discharge of other liabilities.</p> <p>.5 No dispositions or acquisitions of any property.</p> <p>.6 Material transactions are properly recorded and filed.</p> <p>.7 Minutes of shareholders' and directors' meetings (and all other corporate records) are accurate and complete.</p> <p>.8 Company's assets are properly insured, including against public liability.</p> <p>.9 All assets are properly maintained and, where needed, repaired or replaced.</p> <p>.10 Company has issued no guarantees or indemnities, or entered into any agreements.</p> <p>.11 There have been no pay increases or agreements to increase pay to directors and officers since a stipulated date, and no pay increases or agreements to increase pay to employees except in the ordinary course of business.</p> <p>.12 Company has not paid or agreed to pay any benefits under a pension, profit-sharing, bonus, or other similar plan, except as stated.</p> <p>.13 All transactions are in the ordinary course of business.</p> <p>.14 List of company's major customers and suppliers.</p> <p>.15 No termination of any operations or arrangements with any customer or supplier.</p> <p>.16 No changes in billing arrangements or credit terms.</p> <p>.17 No material change in business or operations (adverse or otherwise).</p> <p>.18 No extraordinary or material loss or damage.</p> <p>Note: many of these items may need to be qualified by the phrase "except in the ordinary course of business" or a materiality threshold. Compare also with item 5.5.</p>	

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<p>6.12 Accuracy of the balance sheet and financial statements.</p> <ul style="list-style-type: none"> .1 True, correct and complete; fairly represent financial position of company. .2 Generally accepted accounting principles applied on a basis consistent with previous years. .3 Full disclosure of all material financial transactions. .4 Full disclosure of current and contingent liabilities. .5 Adequacy of provision for doubtful accounts receivable. .6 Basis on which inventory is valued (typically, at the lower of cost or realizable value). .7 No more than a stipulated percentage (typically 10%) of the inventory is obsolete or unsaleable in the ordinary course of business. .8 Federal income tax returns and GST/HST returns have been examined by the Canada Revenue Agency to a specified year or reporting period, and the balance sheet reflects the results. .9 No adverse material change in company's financial position since date of statements. .10 Prepaid expenses outlined in schedule. .11 Refundable deposits outlined in schedule. .12 No liabilities or indebtedness except as presented or in a schedule. <p>6.13 Contracts.</p> <ul style="list-style-type: none"> .1 Company is not in default under any contracts. All contracts between the company and dealers, customers, or suppliers are in good standing and have not been assigned or encumbered. .2 Contractual obligations not altered, violated, or breached by completion of this transaction. .3 No contracts involve total liability in excess of a specified sum except those set out in schedule. .4 Notice period for termination without further liability of contracts with third parties is as follows: <ul style="list-style-type: none"> (a) Directors. (b) Officers. (c) Employees. (d) Management firms. (e) Accountants. (f) Lawyers. (g) Agents. (h) Suppliers or customers. (i) Distributors. (j) Lessors. (k) Lessees. (l) Any other material contracts. 	

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<p>.5 There are no agreements to provide severance pay or separation allowances. No change-of-control agreements.</p> <p>.6 No obligations to pay benefits or share profits survive termination of employment or service contracts.</p> <p>.7 No collective agreement is in force or under negotiation.</p> <p>.8 Leases on real property or equipment.</p> <p style="padding-left: 20px;">(a) Validity.</p> <p style="padding-left: 20px;">(b) Compliance with registration requirements.</p> <p style="padding-left: 20px;">(c) Rents have been paid.</p> <p style="padding-left: 20px;">(d) Company and other party not in breach of terms, and company entitled to all benefits.</p> <p style="padding-left: 20px;">(e) Company has not assigned, sublet, or encumbered its interest under the leases.</p> <p style="padding-left: 20px;">(f) Terms not altered, breached, or violated by completion of transaction.</p> <p>6.14 Labour issues.</p> <p>.1 Employees are set out in schedule with name, job title, duration of employment, vacation, and remuneration. Consider list of those on leave or disability.</p> <p>.2 No employees of the company are represented by a certified bargaining unit.</p> <p>.3 No applications for certification are pending.</p> <p>.4 No attempt has been made to certify. No threat of strike or other disturbance.</p> <p>6.15 Pension and benefits issues.</p> <p>.1 No pension or any other benefit plan except as specified. Copies provided.</p> <p>.2 List of all policies and procedures regarding vacation, disability, etc.</p> <p>.3 Pension plans registered and in compliance with applicable law. No unfunded liability. No changes. It is important to consider obtaining tax and actuarial assistance in calculating liability for post-retirement benefits.</p> <p>.4 Stock options or other incentive or profit-sharing plans.</p> <p>6.16 Company's legal position.</p> <p>.1 Company holds all permits, licences, registrations, and authorizations needed to own and operate its assets and carry on its business.</p> <p>.2 Property is zoned to permit existing operations.</p> <p>.3 Company's operations do not infringe any registered patent, trademark, or copyright.</p> <p>.4 Company is not in breach of any law or court order.</p> <p>.5 Company is not in breach of any statute, regulation, or bylaw.</p> <p>.6 No pending change in statutes, regulations, or bylaws (including zoning) will render any part of the company's present operations illegal.</p>	

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<p>.7 No litigation against company is in progress, pending, or threatened. Consider extending representations and warranties to major customers and suppliers.</p> <p>.8 Company has a valid defence to any actual or potential lawsuits (specify).</p> <p>.9 Company has not experienced, nor is it aware of any occurrence or event which has, or might reasonably be expected to have, a material adverse effect on the business or the results of its operations.</p> <p>.10 No outstanding work orders or deficiencies.</p> <p>.11 Condition of properties and equipment.</p> <p>.12 No subsidiaries or other interests.</p> <p>.13 Listing, adequacy and status of insurance.</p> <p>6.17 Company tax returns.</p> <p>.1 True and timely filing of all federal, provincial, and local tax returns (income, sales, GST/PST/HST, corporation capital tax, employee deduction remittances) in accordance with applicable law. Further information can be found at www.cra-arc.gc.ca and www2.gov.bc.ca.</p> <p>.2 Tax liability is as indicated by returns. Complete and correct copies provided.</p> <p>.3 Timely payment of taxes shown on returns; no tax liability other than as disclosed in current financial statements.</p> <p>.4 All required withholdings and remittances made.</p> <p>.5 No property tax owing.</p> <p>.6 Company (if an importer) has paid all customs, excise, and federal sales tax and none of its goods are affected by a notice of seizure.</p> <p>.7 No elections have been made under <i>Income Tax Act</i>, s. 83 or 85.</p> <p>.8 All elections required in connection with distributions have been made.</p> <p>.9 No acquisitions of property from persons not at arm's length.</p> <p>.10 No dispositions of property to persons not at arm's length.</p> <p>.11 Adequate provision made for current tax liability.</p> <p>.12 Company not aware of contingent liabilities or grounds for reassessment.</p> <p>.13 Assessments issued up to a particular date; no actions, suits, proceedings, etc. regarding tax matters.</p> <p>.14 No waiver of statutory time limits for assessments.</p> <p>6.18 Review the company's tax status with a tax advisor (consider which tax issues and attributes are most relevant to the business).</p> <p>6.19 Vendor is not a "non-Canadian" within the meaning of <i>Investment Canada Act</i>, R.S.C. 1985, c. 28 (1st Supp.), s. 3.</p> <p>6.20 Vendor is not a non-resident of Canada within the meaning of <i>Income Tax Act</i>, s. 116.</p> <p>6.21 Vendor is a GST/HST "registrant" for the purposes of Part IX of the <i>Excise Tax Act</i>.</p>	

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<p>6.22 Consider application of the <i>Competition Act</i>, R.S.C. 1985, c. C-34, and any need for representations and warranties regarding the size of the vendor for the purpose of the pre-notification provisions of that Act. Consider application for an advance ruling certificate (<i>Competition Act</i>, s. 102).</p> <p>6.23 Representations and warranties survive closing. Warranties and representations are made as at the date of execution and, subject to specified exceptions, will be true at the date of closing.</p> <p>6.24 Time and dollar limits on warranties.</p> <p>6.25 Incorporate recitals as appropriate.</p>	
<p>7. PURCHASER'S REPRESENTATIONS AND WARRANTIES</p> <p>7.1 Purchaser's corporate status.</p> <p>.1 Valid incorporation.</p> <p>.2 Good standing.</p> <p>.3 Status under the <i>Investment Canada Act</i>.</p> <p>.4 Consider size of the purchaser, as in item 6.2.1 (authorized shares) for vendor.</p> <p>7.2 Purchaser's right to purchase.</p> <p>.1 No conflict with constating documents such as memorandum, notice of articles, and articles.</p> <p>.2 No conflict with any agreement to which the purchaser is a party.</p> <p>.3 No third-party consents are required to purchase shares.</p> <p>.4 Purchase has been authorized by all necessary corporate action.</p> <p>7.3 Representations and warranties survive closing.</p>	
<p>8. VENDOR'S OBLIGATIONS—PRIOR TO CLOSING</p> <p>8.1 See matters listed in item 5.5.</p> <p>8.2 Consider inclusion of break or termination fee (i.e., to cover cost and expenses of transaction) in case the vendor fails to complete the sale.</p>	
<p>9. CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER</p> <p>9.1 Accuracy of all representations and warranties as of closing date.</p> <p>9.2 Vendor not in breach of any obligations and has performed its obligations.</p> <p>9.3 Purchaser has received an opinion from a stipulated law firm asserting:</p> <p>.1 Valid incorporation of company.</p> <p>.2 The company is in good standing.</p> <p>.3 All necessary steps and proceedings have been taken to effect share transfer and appropriate transaction.</p> <p>.4 Capital structure and vendor's interest are as represented.</p> <p>.5 Outstanding shares are validly issued, fully paid, and non-assessable.</p> <p>.6 Company has good and marketable title to assets in schedule, subject only to specified encumbrances.</p>	

ACTION TO BE CONSIDERED	NOTES
<p>.7 No legal actions against the company are threatened or in progress (in reliance on specified searches or officer's certificate).</p> <p>.8 To the best of the author's knowledge, there is no cause for legal action against the company.</p> <p>.9 Agreement is fully enforceable against the vendor.</p> <p>.10 In reliance on an officer's certificate and without independent investigation, the representations and warranties are true.</p> <p>Note: some of the preceding opinions will be resisted by vendor's counsel and may not be appropriate; see CLEBC's <i>Advising British Columbia Businesses</i>. Consider whether some of these opinions should also be obtained with respect to shareholders who are parties.</p> <p>9.4 Delivery of documents to the purchaser.</p> <p>9.5 No laws are passed before closing that adversely affect the business of the company or the right of the purchaser to the full enjoyment of corporate assets.</p> <p>9.6 Favourable review of acquisition of shares, if required by the <i>Investment Canada Act</i> or the <i>Competition Act</i>.</p> <p>9.7 No adverse condition or action affecting the assets or business of the company that would materially adversely affect, or reduce the value of, those assets (as a whole) or business.</p> <p>9.8 No damage by fire, negligence, or otherwise to the assets materially affecting the assets or business of the company.</p> <p>9.9 No court action prohibiting purchase.</p> <p>9.10 No court action materially prohibiting or adversely affecting the right of the company to carry on its business.</p> <p>9.11 Statement that conditions precedent are for the sole benefit of the purchaser and can be waived by the purchaser without prejudice.</p> <p>Note: Consider other major items that may be material to the transaction or the business.</p>	
<p>10. CONDITIONS PRECEDENT TO OBLIGATIONS OF VENDOR</p> <p>10.1 Accuracy of all representations and warranties as of the closing date.</p> <p>10.2 Purchaser is not in breach of any obligations and has performed its obligations.</p> <p>10.3 Production of certified cheque or bank draft in required amount at closing.</p> <p>10.4 Payment of escrowed funds into trust account by time of closing.</p> <p>10.5 Release of vendor from obligations under specified guarantees of the indebtedness of the company (alternatives: pay off debts, indemnify vendor). Consider this for directors, officers, and shareholders, as applicable.</p> <p>10.6 Purchaser puts up required security (if deferred payments).</p> <p>10.7 Favourable review of acquisition of shares, if required by the <i>Investment Canada Act</i> or the <i>Competition Act</i>.</p> <p>10.8 Statement that conditions precedent are for the sole benefit of the vendor and can be waived by the vendor without prejudice.</p>	

ACTION TO BE CONSIDERED	NOTES
<p>11. CLOSING</p> <p>11.1 Date, time, and place, or as the parties otherwise agree in writing.</p> <p>11.2 Right of the parties to defer closing until a certain date, as agreed.</p> <p>11.3 Exchange of documents.</p> <ul style="list-style-type: none"> .1 Existing share certificates endorsed for transfer (or with appropriate instrument of transfer). New share certificates in the purchaser's name. .2 Resignations of officers and directors (and releases, if required by vendor or purchaser or both). Consents to act and appointments of new directors and officers. .3 Books, records, and company seal. .4 Minutes of directors' meetings or unanimous directors' resolutions in writing authorizing transfer of shares and the transaction. Consider similar resolutions for corporate vendor, together with shareholders' resolution (if applicable). .5 Title documents for corporate assets. .6 Certificates of accuracy of representations and warranties. .7 Certificate under <i>Income Tax Act</i>, s. 116(2) or (4) (non-resident vendor only). .8 Assignment of vendor's loans. .9 Discharges of security to be discharged on closing. .10 Opinions of solicitors. .11 Evidence of compliance with the <i>Investment Canada Act</i>, <i>Competition Act</i>, and other statutes, as required. .12 Any additional contracts contemplated in the agreement. .13 Consents and approvals. .14 All other documents required by the purchaser. <p>11.4 Payment of purchase price.</p> <p>12. LOSS OR DAMAGE PRIOR TO CLOSING</p> <p>12.1 If the loss or damage materially affects the assets or business of the company,</p> <ul style="list-style-type: none"> .1 Terminate the contract (consider disposition of deposit). .2 Complete the contract. <ul style="list-style-type: none"> (a) Pay the insurance proceeds to the purchaser. (b) Assign the insurance proceeds to the purchaser. .3 Adjust the purchase price. <p>13. VENDOR'S INDEMNIFICATION</p> <p>13.1 Vendor will indemnify purchaser for breach of representation, warranty, or covenant.</p>	

ACTION TO BE CONSIDERED	NOTES
<p>13.2 Indemnity to survive closing (consider duration of survival, and if it is limited monetarily).</p> <p>14. VENDOR'S OBLIGATIONS—POST CLOSING</p> <p>14.1 Promise not to compete with business presently carried on by company.</p> <p>.1 Scope (specify reasonable time and geographic limits).</p> <p>.2 Employment, investment, or other association with competing corporations or firms prohibited.</p> <p>15. GENERAL PROVISIONS</p> <p>15.1 Further assurances.</p> <p>15.2 Entire agreement.</p> <p>15.3 Merger of oral representations.</p> <p>15.4 No collateral agreements.</p> <p>15.5 Termination, modification, or waiver in writing only, signed by the party to be charged.</p> <p>15.6 Survival of representations and warranties.</p> <p>15.7 Successors.</p> <p>15.8 Limitations on assignability.</p> <p>15.9 Choice of law.</p> <p>15.10 Choice of forum.</p> <p>15.11 Liquidated damages.</p> <p>15.12 Joint and several liability of vendors (if more than one).</p> <p>15.13 Time of essence.</p> <p>15.14 Notices.</p> <p>.1 Addresses for service.</p> <p>.2 Prepaid registered mail or other arrangement.</p> <p>.3 Deemed date of receipt.</p> <p>15.15 Nominees.</p> <p>15.16 Publicity.</p> <p>.1 Press releases.</p> <p>.2 Confidentiality of transaction details and agreement provisions both before and after closing, to include directors, officers, customers, suppliers, and employees of all companies involved.</p> <p>15.17 Default.</p> <p>.1 Terminate the contract.</p> <p>.2 Adjust the purchase price.</p> <p>.3 Provide for waiver of default.</p> <p>15.18 Severability of unenforceable clauses.</p>	

ACTION TO BE CONSIDERED	NOTES
<p>15.19 General interpretation and construction.</p> <ul style="list-style-type: none"> .1 Principles that govern the interpretation of the agreement. <ul style="list-style-type: none"> (a) Insertion of headings for convenience only. (b) Masculine/feminine form. (c) Singular/plural form. (d) Use of the word “includes”. (e) No <i>contra proferentem</i>. .2 Reference to currency. .3 Reference to time. .4 Schedules are part of the agreement. <p>15.20 Costs of the transaction.</p> <p>15.21 Arbitration, if considered desirable.</p> <p>16. SCHEDULES (SAMPLE) (subject to provisions of agreement)</p> <ul style="list-style-type: none"> 16.1 Schedule of Audited Financial Statements. 16.2 Schedule of Unaudited Financial Statements. 16.3 Schedule of Company Assets. 16.4 Schedule of Material Contracts. 16.5 Schedule of Accounting Principles. 16.6 Schedule of Permitted Encumbrances. 16.7 Schedule of Leases, Licences and Permits. 16.8 Schedule of Employees. 16.9 Schedule of Pension and Benefit Plans, and Incentive Arrangements. 16.10 Schedule of Environmental Compliance Exemptions. 16.11 Other schedules as necessary. 	

