

PROVISIONS 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, 2016.</p> <p>New developments:</p> <ul style="list-style-type: none"> • Additional property transfer tax on residential property transfers to foreign entities. Effective August 2, 2016, the <i>Property Transfer Tax Act</i>, R.S.B.C. 1996, c. 378 was amended to impose an additional tax of 15 per cent on transfers of residential property in the Greater Vancouver Regional District (the “GVRD”) to “foreign entities” (see ss. 2.01 to 2.04). The additional tax applies on all applicable transfers registered with the Land Title Office on or after August 2, 2016, regardless of when the contract of purchase and sale was made effective. A “foreign entity” is defined as a “foreign national”, as defined in s. 2(1) of the <i>Immigration and Refugee Protection Act</i>, S.C. 2001, c. 27, or a “foreign corporation”, which is a corporation not incorporated in Canada or a corporation incorporated in Canada but controlled directly or indirectly by a foreign national or a foreign corporation. An Additional Property Transfer Tax return (FIN 532) must be filed at the time the transfer is registered. Further information, including the municipalities included in the GVRD, can be found in the Ministry of Finance Tax Information Sheet 2016-006 at www2.gov.bc.ca/assets/gov/taxes/property-taxes/property-transfer-tax/forms-publications/is-006-additional-property-transfer-tax-foreign-entities-vancouver.pdf. • Franchises Act. The British Columbia <i>Franchises Act</i>, S.B.C. 2015, c. 35 received Royal Assent on November 17, 2015, and will come into force on February 1, 2017 (B.C. Reg. 238/2016). The new legislation will impose a duty of fair dealing, require a franchisor to provide a disclosure document to a prospective franchisee, and provide remedies for the failure to do so or for misrepresentation. The Franchises Regulation, B.C. Reg. 238/2016 is available at www.bclaws.ca. • Articled students permitted to act as commissioners for taking affidavits. Effective September 1, 2015, articled students and temporary articled students are prescribed as persons who are commissioners for taking affidavits in British Columbia (B.C. Reg. 142/2015, pursuant to s. 60(1) of the <i>Evidence Act</i>, R.S.B.C. 1996, c. 124). Principals remain responsible for students’ actions and will need to ensure that students understand the effect of acting as commissioner. • Law Society Rules. On July 1, 2015, revised and consolidated Law Society Rules came into effect. See https://www.lawsociety.bc.ca/page.cfm?cid=4089&t=Law-Society-Rules-2015. • Code of Professional Conduct for British Columbia (the “BC Code”). In July 2015, rule 3.7-9 of the <i>BC Code</i> was amended to require that a lawyer promptly notify the client, other counsel and the court or tribunal of the lawyer’s withdrawal from a file. An annotated version of the <i>BC Code</i> is published at www.lawsociety.bc.ca. 	

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<p>Of note:</p> <ul style="list-style-type: none"> • General duty of honesty in contractual performance. In <i>Bhasin v. Hrynew</i>, 2014 SCC 71, the Supreme Court of Canada recognized the general duty of honesty in contractual performance: parties must not lie or otherwise knowingly mislead each other about matters directly linked to the performance of a contract. • Additional resources. For further information about share purchase procedures, see <i>Advising British Columbia Businesses</i>, looseleaf and online (CLEBC, 2006); <i>Buying and Selling a Business: Annotated Precedents</i>, looseleaf (CLEBC, 2000); and the <i>Due Diligence Deskbook</i>, looseleaf and online (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 in certified cheque or bank draft.</p> <p>(a) Drawn on a Canadian chartered bank.</p> <p>(b) Payable at par in a certain city.</p> <p>(c) Payable in Canadian funds.</p> <p>(d) State the party to whom the cheque is payable.</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> <p>.2 Company to comply with all relevant laws in the jurisdiction in which the company carries on business.</p>	

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<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>Certain 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. .6 No shareholders' agreements. 	

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<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> <p>.3 Company has handled, stored, treated, shipped, and disposed of hazardous substances in compliance with all laws.</p>	

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<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> <p>.2 Management contracts.</p> <p>.3 Other contracts (particularly, material contracts).</p>	

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<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> <p>6.12 Accuracy of the balance sheet and financial statements.</p> <p>.1 True, correct and complete; fairly represent financial position of company.</p>	

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<ul style="list-style-type: none"> .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. .5 There are no agreements to provide severance pay or separation allowances. No change-of-control agreements. 	

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<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> (a) Validity.</p> <p> (b) Compliance with registration requirements.</p> <p> (c) Rents have been paid.</p> <p> (d) Company and other party not in breach of terms, and company entitled to all benefits.</p> <p> (e) Company has not assigned, sublet or encumbered its interest under the leases.</p> <p> (f) Terms not altered, breached or violated by completion of transaction.</p> <p>6.14 Labour issues.</p> <p>.1 Employees as 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> <p>.7 No litigation against company is in progress, pending, or threatened. Consider extending representations and warranties to major customers and suppliers.</p>	

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<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. (Note that effective April 1, 2013, the harmonized sales tax (“HST”) was eliminated, and the <i>Provincial Sales Tax Act</i>, S.B.C. 2012, c. 35, reinstated the PST; GST (rather than HST) applies under the <i>Excise Tax Act</i>, R.S.C. 1985, c. E-15. Further information about the GST and PST 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> <ul style="list-style-type: none"> .1 Valid incorporation. .2 Good standing. .3 Status under the <i>Investment Canada Act</i>. .4 Consider size of the purchaser, as in item 6.2.1 (authorized shares) for vendor. <p>7.2 Purchaser's right to purchase.</p> <ul style="list-style-type: none"> .1 No conflict with constating documents such as memorandum, notice of articles, and articles. .2 No conflict with any agreement to which the purchaser is a party. .3 No third-party consents are required to purchase shares. .4 Purchase has been authorized by all necessary corporate action. <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> <ul style="list-style-type: none"> .1 Valid incorporation of company. .2 The company is in good standing. .3 All necessary steps and proceedings have been taken to effect share transfer and appropriate transaction. .4 Capital structure and vendor's interest are as represented. .5 Outstanding shares are validly issued, fully paid, and non-assessable. .6 Company has good and marketable title to assets in schedule, subject only to specified encumbrances. 	

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<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>	

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<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>	

PROVISIONS 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>	

PROVISIONS 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 contra proferentem. .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. 	