

| LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant<br>ACTION TO BE CONSIDERED   | NA | L | LA | DATE<br>DUE | DATE<br>DONE |
|---|----|---|----|-------------|--------------|
| <p style="text-align: center;"><b>INTRODUCTION</b></p> <p><b>Purpose and currency of checklist.</b> This checklist is designed to be used with the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1) checklist. It is intended for use as a guide to incorporation of companies under the British Columbia <i>Business Corporations Act</i>, S.B.C. 2002, c. 57 (the “BCA”). The checklist is current to September 1, 2018.</p> <p><b>New developments:</b></p> <ul style="list-style-type: none"> <li>• <b>Franchises Act.</b> The British Columbia <i>Franchises Act</i>, S.B.C. 2015, c. 35, came into force on February 1, 2017 (B.C. Reg. 238/2016). This complex new legislation introduces fundamental changes to franchise law in British Columbia, including extensive disclosure requirements, enhanced rescission remedies, and new deadlines and limitations. If you provide any advice or services in the area of franchise law, the Law Society recommends taking a legal education course on the new law.</li> <li>• <b>Consideration.</b> In <i>Rosas v. Toca</i>, 2018 BCCA 191, the Court of Appeal held that where parties to a contract agree to vary its terms, the variation can be enforceable without fresh consideration, absent duress, unconscionability, or other public policy concerns. A lack of fresh consideration is no longer determinative.</li> <li>• <b>Law Society Rules</b> <ul style="list-style-type: none"> <li>• <b>Juricert password.</b> When using the electronic filing system of the Land Title Office, a lawyer must not disclose the lawyer’s password or permit any other person, including an employee, to use the password or affix the lawyer’s e-signature (Law Society Rule 3-96.1).</li> <li>• <b>Temporary articulated student restrictions.</b> Temporary articulated students are restricted from making certain appearances in Supreme Court, but not Provincial Court (Law Society Rule 2-71(2)).</li> <li>• <b>Electronic transfer of trust funds.</b> The Rules were amended in December 2017, effective July 1, 2018, to allow lawyers to electronically transfer trust funds using an online banking platform (Law Society Rules 3-64(4) and (6) to (8); 3-64.1; 3-64.2; 3-65(1), (1.1), and (2); and 3-66(2)). For questions, contact <a href="mailto:trustaccounting@lsbc.org">trustaccounting@lsbc.org</a> or 604.697.5810.</li> <li>• <b>Client identification and verification.</b> The Federation of Law Societies of Canada has proposed amendments to its Model Rule on Client Identification and Verification Requirements. If the Federation’s Council approves the amendments, they will be forwarded to the law societies for adoption. Changes to the Law Society Rules would require the Benchers’ approval and, if approved, may affect the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1) checklist current to September 1, 2018.</li> <li>• The Law Society Rules are published at <a href="http://www.lawsociety.bc.ca/support-and-resources-for-lawyers/act-rules-and-code/law-society-rules">www.lawsociety.bc.ca/support-and-resources-for-lawyers/act-rules-and-code/law-society-rules</a>.</li> </ul> </li> </ul> <p><b>Of note:</b></p> <ul style="list-style-type: none"> <li>• <b>Fraud prevention.</b> Lawyers should maintain an awareness of the myriad scams that target lawyers, including the bad cheque scam and fraudulent changes in payment instructions, and must be vigilant about the client identification and no-cash rules. See the “Fraud Prevention” page, including the “Fraud Alerts” section, on the Law Society website at <a href="http://www.lawsociety.bc.ca/support-and-resources-for-lawyers/lawyers-insurance-fund/fraud-prevention">www.lawsociety.bc.ca/support-and-resources-for-lawyers/lawyers-insurance-fund/fraud-prevention</a>.</li> </ul> |    |   |    |             |              |

| LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant<br>ACTION TO BE CONSIDERED   | NA | L | LA | DATE DUE | DATE DONE |
|---|----|---|----|----------|-----------|
| <ul style="list-style-type: none"> <li>• <b>Searches of lawyers’ electronic devices at borders.</b> In 2017, in response to the Law Society’s concerns about the searches of lawyers’ electronic devices by Canada Border Services Agency officers, the Minister of Public Safety advised that officers are instructed not to examine documents if they suspect they may be subject to privilege, if the documents are specifically marked with the assertion they are privileged, or if privilege is claimed by a lawyer with respect to the documents. View the Minister’s letter and Law Society’s response at <a href="http://www.lawsociety.bc.ca/our-initiatives/rule-of-law/issues-that-affect-the-rule-of-law">www.lawsociety.bc.ca/our-initiatives/rule-of-law/issues-that-affect-the-rule-of-law</a>. Lawyers are reminded to claim privilege where appropriate and to not disclose privileged information or the password to electronic devices containing privileged information without client consent or a court order. See also “Client Confidentiality—Think Twice before Taking Your Laptop or Smart Phone across Borders” in the Spring 2017 <i>Benchers’ Bulletin</i> and “Crossing the border into or out of the United States” in the Spring 2018 <i>Benchers’ Bulletin</i>.</li> <li>• <b>Aboriginal law.</b> 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. In addition to <i>Indian Act</i> considerations, some Indian bands or First Nation entities have entered into treaties that may have governance, taxation, and other business-related implications. The Crown’s duty to consult and seek accommodation with respect to activities potentially affecting Aboriginal title or rights may also have implications for businesses with government agreements or government-issued tenures.<br/><br/>Businesses that engage in activities on reserve lands and on lands subject to treaty or claims of Aboriginal rights on title are strongly encouraged to familiarize themselves with applicable laws and governmental policies. Consider seeking advice from a lawyer with experience in Aboriginal law matters. Further information on Aboriginal law issues is available on the “Aboriginal Law” page of the “Practice Areas” section of the Continuing Legal Education Society of British Columbia website (<a href="http://www.cle.bc.ca">www.cle.bc.ca</a>) and in other CLEBC publications.</li> <li>• <b>Additional resources.</b> For detailed information about incorporation procedures, see <i>British Columbia Company Law Practice Manual</i>, 2nd ed. (CLEBC, 2003–); <i>Company Law Deskbook</i> (CLEBC, 2006–); and <i>Advising British Columbia Businesses</i> (CLEBC, 2006–).</li> </ul> |    |   |    |          |           |

| LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant<br>ACTION TO BE CONSIDERED  | NA | L | LA | DATE<br>DUE | DATE<br>DONE |
|--|----|---|----|-------------|--------------|
| <p style="text-align: center;"><b>CONTENTS</b></p> <ol style="list-style-type: none"> <li>1. Initial Contact</li> <li>2. Initial Interview</li> <li>3. After the Initial Interview</li> <li>4. Proceedings by Incorporators</li> <li>5. Preparation for First Meeting of Directors</li> <li>6. Preparation for First Meeting of New Shareholders</li> <li>7. Execution of Documents</li> <li>8. File in Records Office (Minute Book)</li> <li>9. Miscellaneous Steps</li> </ol> <p style="text-align: center;"><b>CHECKLIST</b></p> <ol style="list-style-type: none"> <li><b>1. INITIAL CONTACT</b> <ol style="list-style-type: none"> <li>1.1 Arrange the initial interview and ask client to bring any relevant documents.</li> <li>1.2 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.</li> </ol> </li> <li><b>2. INITIAL INTERVIEW</b> <ol style="list-style-type: none"> <li>2.1 Determine for whom you will act (for example, the company or one or all of the shareholders).               <ol style="list-style-type: none"> <li>.1 Ensure there is no conflict of interest. See <i>Code of Professional Conduct for British Columbia</i> (“BC Code”), s. 3.4, and the model conflicts of interest checklist on the Law Society website at <a href="http://www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/checklist-conflicts.pdf">www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/checklist-conflicts.pdf</a>.</li> <li>.2 If acting for more than one party, ensure that you comply with <i>BC Code</i> rules 3.4-5 to 3.4-9 regarding joint retainers. Explain what these requirements mean and that it may be necessary for clients (as shareholders) to seek independent legal advice during the course of the incorporation (for example, with respect to shareholders’ agreements or financing arrangements).</li> <li>.3 Confirm that you will act for certain client(s) and, in the case of a corporate client, confirm who is authorized to give you instructions. Consider a directors’ resolution authorizing a certain person to give you instructions.</li> <li>.4 If your retainer will be limited in scope, note that <i>BC Code</i> rule 3.2-1.1 requires that, before undertaking a “limited scope retainer” (a defined term under rule 1.1-1), you must advise the client about the nature, extent, and scope of the services that you can provide and must confirm in writing as soon as practicable what services will be provided. This rule does not apply to situations in which you are providing summary advice or to an initial consultation that may result in the client retaining you as lawyer.</li> </ol> </li> </ol> </li> </ol> |    |   |    |             |              |

| LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant<br>ACTION TO BE CONSIDERED  | NA | L | LA | DATE<br>DUE | DATE<br>DONE |
|--|----|---|----|-------------|--------------|
| <p>.5 Be aware of the obligations in the <i>BC Code</i> with respect to competence and communications (see <i>BC Code</i> rules 3.1-2, 7.2-6, and 7.2-6.1).</p> <p>2.2 Advise clients regarding how your legal fees will be charged, the method and timing of payment, and the scope and conditions on which you will act.</p> <p>.1 See <i>BC Code</i>, s. 3.6, regarding reasonable fees and disbursements, and commentary [1] to rule 3.6-3 regarding the duty of candour owed to clients respecting fees and other charges.</p> <p>.2 Discuss your retainer policy with the clients and take an appropriate retainer.</p> <p>.3 Be aware of Law Society Rule 3-59, which prohibits lawyers from accepting from clients \$7,500 or more in cash, subject to certain exceptions.</p> <p>2.3 Determine what your clients wish to accomplish by incorporation. Will incorporation meet their goals or is another business structure better suited?</p> <p>.1 See Chapter 1 of <i>Advising British Columbia Businesses</i> (CLEBC, 2006–) for a more detailed discussion of considerations regarding the appropriate business structure for your clients.</p> <p>Consider matters such as:</p> <p>.1 Whether any existing business will be taken over by the proposed company. If so, what is the nature of that business, who operates it, who are the persons interested in it, and what is the nature and extent of their interest?</p> <p>.1A If the business already exists, what legal structure is being used to operate the business?</p> <p>.2 What assets and liabilities will be acquired by the proposed company; how will they be paid for?</p> <p>(a) Is there potential tax liability for the transferor of assets to the company? Consult with an accountant or tax lawyer to determine whether a tax deferred rollover is available.</p> <p>.2A How successful will the business be at the time of incorporating the proposed company?</p> <p>(a) If the business is a start-up, will the client want to write-off the start-up costs against income earned from other sources?</p> <p>.3 Is the business likely to expand; are the clients planning to offer shares to investors? If so, explain securities law requirements and possible exemptions or consult with a securities lawyer.</p> <p>.4 Financing of the business through debt and equity financing options.</p> <p>.5 Ownership of the equity of the proposed company.</p> <p>.6 Control of the voting rights of the proposed company.</p> <p>.7 Who will be the directors responsible for overseeing management, and the officers in charge of day-to-day operations and the employees?</p> <p>.8 Will employees be allowed to participate in earnings or equity?</p> <p>(a) If stock options or other securities are contemplated, then explain securities law requirements or consult with a securities lawyer.</p> |    |   |    |             |              |

| LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant<br>ACTION TO BE CONSIDERED  | NA | L | LA | DATE<br>DUE | DATE<br>DONE |
|--|----|---|----|-------------|--------------|
| <p>.9 What are the personal financial plans of each client and the personal tax planning objectives and positions of each? If necessary, liaise with the client’s tax and financial advisors to determine how best to meet the client’s tax and estate planning objectives.</p> <p>.10 Whether incorporation in the form and for the purposes envisioned by the clients will violate any laws (for example, legislation concerning foreign ownership or incorporation of certain types of businesses or professions, restrictive covenants, fraudulent preferences or conveyances).</p> <p>.11 Whether the company needs a GST, PST, or WCB registration; consider directing your client to the website (<a href="http://www.bcbusinessregistry.ca">www.bcbusinessregistry.ca</a>) for registrations with various public agencies. Further information about GST and PST is available at <a href="http://www.cra-arc.gc.ca">www.cra-arc.gc.ca</a> and <a href="http://www2.gov.bc.ca">www2.gov.bc.ca</a>, respectively.</p> <p>2.4 Discuss the effect of incorporation, including:</p> <ol style="list-style-type: none"> <li>.1 the separate legal existence of a company, the distinction between the position and authority of directors and shareholders;</li> <li>.2 income tax rules that will apply to the company and shareholders (for example, applicable tax rates, denial of start-up losses to clients personally, effect of paying dividends to shareholders); and</li> <li>.3 ongoing filing and administrative requirements to keep the company in good standing.</li> </ol> <p>2.5 If the decision is made to incorporate, advise the clients of the advantages and disadvantages of incorporating a company under provincial law (<i>BCA</i>), under federal law (<i>Canada Business Corporations Act</i>, R.S.C. 1985, c. C-44), or under the laws of another province (if you are qualified to give such advice).</p> <ol style="list-style-type: none"> <li>.1 Determine under which regime the clients wish to incorporate.</li> <li>.2 Consider whether the company will carry on business in more than one province, or, if a federal company, whether it will carry on business in British Columbia and will need to make any extraprovincial registrations where business is carried on.</li> <li>.3 Consider consulting agents in other jurisdictions to determine extraprovincial registration requirements, as these requirements could affect the share structure.</li> <li>.4 Consider whether an unlimited liability corporation (“ULC”) would be appropriate. See Part 2.1 of the <i>BCA</i> for further information about the incorporation and legislative regulation of ULCs in British Columbia. This corporate structure is of primary benefit to U.S. investors in Canada, as it offers certain tax benefits in the United States.</li> <li>.5 Part 2.2 of the <i>BCA</i> concerns the incorporation and legislative regulation of community contribution companies (“CCCs”). A CCC is limited in its ability to distribute profits but may distribute profits for community purposes.</li> </ol> |    |   |    |             |              |

| LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant<br>ACTION TO BE CONSIDERED  | NA | L | LA | DATE<br>DUE | DATE<br>DONE |
|--|----|---|----|-------------|--------------|
| <p>Note: The balance of this checklist deals with incorporation of a company (excluding ULCs and CCCs) under the <i>BCA</i>. While some of this information is also applicable to the incorporation of a ULC or CCC, specific requirements relating to ULCs and CCCs are set out in Parts 2.1 and 2.2 of the <i>BCA</i>.</p> <p>2.6 Discuss and decide on the contents of the incorporation agreement, incorporation application, and notice of articles. Matters to consider include:</p> <p>.1 Proposed name of the company and alternative choices (check precise spelling, punctuation, and capitalization and see <i>BCA</i>, ss. 23 to 25).</p> <p>(a) You may submit to the Registrar of Companies up to three choices for a name at one time, and doing so could save the client’s time and money if the first choice is not available.</p> <p>(b) A company name must have a distinctive element, a descriptive element, and a corporate designation (e.g., ABC Manufacturing Limited).</p> <p>(c) Consider doing an informal preliminary name check.</p> <p>(d) Find out whether the clients want trade-mark searches or name searches for extraprovincial registration in other provinces.</p> <p>(e) Find out whether the company name will be used in connection with providing goods and services to the public and whether trade-mark registration of a name or design is desired. Advise the client that name clearance by the Corporate Registry under the <i>BCA</i> does not protect the client against possible claims for infringement of trade-names registered to another party under the <i>Trade-marks Act</i>, R.S.C. 1985, c. T-13, or against common-law passing-off actions. If there is any possibility of the company conducting business in more than one jurisdiction, consider a cross-country name search.</p> <p>.2 Any translation of the company’s name that the company intends to use outside Canada (see <i>BCA</i>, s. 25). Note that a company name must be in French, English, or both languages.</p> <p>.3 Authorized share structure (see <i>BCA</i>, ss. 52, 53, 59, and 60). If the clients have retained an accountant, consult with him or her. Consider:</p> <p>(a) Number of shares needed immediately.</p> <p>(b) Number of shares likely to be needed in the future.</p> <p>(c) Any reason for limits on the number of shares the company is authorized to issue.</p> <p>(d) Any reason for having shares of more than one class.</p> <p>(e) Purposes for the different classes of shares.</p> <p>(f) Special rights or restrictions to be attached to classes of shares (including voting control, dividends and distribution of profits, purchase or redemption of shares, distribution of property in a winding-up and conversion rights) and whether the use of certain share rights and restrictions will affect the valuation of the shares for income tax purposes.</p> <p>(g) Whether special rights or restrictions should provide that shares may be issued in one or more series.</p> <p>(h) Whether shares should be with or without par value and, if with par value, the type of currency (Canadian or foreign).</p> |    |   |    |             |              |

| LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant<br>ACTION TO BE CONSIDERED   | NA | L | LA | DATE DUE | DATE DONE |
|---|----|---|----|----------|-----------|
| <p>(i) Whether the company will be registered in other jurisdictions having a tax or fee dependent on the number of shares authorized.</p> <p>.4 The location of the company’s records and registered offices.</p> <p>(a) Obtain full street address or other sufficient description of location. (Refer to <i>BCA</i>, ss. 34, 42 to 46, and 48.)</p> <p>(b) Advise that it is the primary responsibility of the company to maintain the records at the records office (<i>BCA</i>, s. 44(4)). Make certain that both you and your clients are aware of the responsibilities associated with acting as records or registered office. Consider providing clients with a list of documents required to be kept at the records office.</p> <p>(c) If your office will be the records or registered office, prepare a records office agreement that sets out the responsibilities of both the company and your office and contains appropriate termination and indemnification provisions. Advise the client of services and fees involved in appointing your office as records office agent and of <i>BCA</i>, s. 9 regarding service.</p> <p>-Note: Consider whether the Trade, Investment and Labour Mobility Agreement between British Columbia and Alberta or the New West Partnership Trade Agreement (“NWPTA”) applies. For information about Corporate Registry procedures pursuant to the NWPTA, visit the “New West Partnership Trade Agreement” page at <a href="http://www.bcregistryservices.gov.bc.ca">www.bcregistryservices.gov.bc.ca</a>.</p> <p>.5 Directors.</p> <p>(a) Ensure that the number of directors is correct (at least three directors for a CCC, one for a private company, and at least three for a public company; see <i>BCA</i>, ss. 51.93 and 120).</p> <p>(b) Check that the directors have the necessary qualifications (<i>BCA</i>, ss. 124 and 125).</p> <p>(c) Confirm compliance with other applicable statutes regarding qualifications (e.g., <i>Legal Profession Act</i>, S.B.C. 1998, c. 9, s. 82(1)(e) requires the directors and president of a law corporation to be practising lawyers in good standing).</p> <p>(d) Obtain the full name and the “prescribed” address of each director. The prescribed address is, at the individual’s option, either the delivery address (and, if different, the mailing address) at which the director can usually be served with documents from 9:00 a.m. to 4:00 p.m. (local time), except for Saturdays, Sundays, and holidays, or the delivery address (and, if different, the mailing address) of the director’s residence; see Business Corporations Regulation, B.C. Reg. 65/2004 (“<i>BCA Regulation</i>”), s. 2.</p> <p>(e) Obtain written consents to act as directors (recommended even if a meeting to elect them will be held at which they will be present (<i>BCA</i>, ss. 121(2), 122(4), and 123). The written consents should contain a list of statutory qualifications.</p> <p>2.7 Determine the contents of the articles (see <i>BCA</i>, s. 12).</p> <p>.1 Consider whether there should be any business or power restrictions (generally not recommended unless required by specific legislation).</p> |    |   |    |          |           |

| LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant<br>ACTION TO BE CONSIDERED  | NA | L | LA | DATE<br>DUE | DATE<br>DONE |
|--|----|---|----|-------------|--------------|
| <p>.2 Consider the matters that may be included in the articles set out in §4.19 to §4.22 of CLEBC’s <i>B.C. Company Law Practice Manual</i>.</p> <p>.3 If using Table 1 articles (see BCA, s. 12(4); BCA Regulation, s. 42, Table 1) or some other standard articles, check for the applicability of, or if changes are required for, matters such as provision that a quorum for general meetings is two persons, the general rule that transferees are entitled to registration of share transfers, rules relating to notice and conduct of general and class meetings, provision that class and series meetings are called and conducted according to the same rules as general meetings, rules relating to election, appointment or removal of directors, provision that a proxy holder can only vote on a poll and not on a show of hands, and terms for evidence and indemnity for lost share certificates.</p> <p>.4 Ensure that the company’s articles provide that, if the company is or becomes a “private issuer”, transfer of shares of the company will be restricted.</p> <p>If drafting or tailoring articles, matters to consider include the following:</p> <p>.1 What majority of votes is required for the company to pass a special resolution at a shareholders’ meeting (called a “special majority”) or for a company to pass a special separate resolution of a class or series?</p> <p>.2 Should there be pre-emptive rights on the issue of shares?</p> <p>.3 Should repurchases or redemptions of shares, or both, be pro rata?</p> <p>.4 Determine the type of resolution to use in order to carry out certain corporate acts.</p> <p>(a) Options include a director’s resolution (except where the <i>BCA</i> expressly requires a shareholders’ resolution) and several types of shareholders’ resolutions (namely, an ordinary resolution, a special resolution, a resolution with a higher majority than a special majority (an “exceptional resolution”), and a unanimous resolution).</p> <p>(b) Acts requiring resolutions include alterations to the notice of articles (to the authorized share structure and company name) and alterations to the articles (including creating, varying and deleting special rights and restrictions attached to shares).</p> <p>.5 Provide, if appropriate, for one or more locations for general meetings to be held outside British Columbia or for a resolution to approve a location for a general meeting outside British Columbia.</p> <p>.6 Specify methods of giving notice (for example, notices of meetings); unless the articles otherwise provide, notices both to shareholders and to directors can be given by mail, fax, or email.</p> <p>.7 Consider whether restrictions should be placed on the form of meetings. The <i>BCA</i> permits meetings of shareholders and directors to be held not only in person but also, if all the persons participating in the meeting can communicate with each other, by telephone or other communications medium.</p> <p>.8 Consider whether the directors should be empowered to set the remuneration of the auditor, reducing the number of matters to be dealt with at annual general meetings and in annual consent resolutions.</p> |    |   |    |             |              |



| LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant<br>ACTION TO BE CONSIDERED   | NA | L | LA | DATE DUE | DATE DONE |
|---|----|---|----|----------|-----------|
| <p>.9 Consider whether the articles should provide for the transfer of the powers of the directors to other persons (typically the shareholders).</p> <p>2.8 Determine who the incorporators will be (individuals or corporations), including full names and the number of voting shares they will subscribe for.</p> <p>2.9 Determine whether the shares will be certificated or uncertificated (<i>BCA</i>, s. 107). If the incorporators will be immediately disposing of their shares, consider issuing uncertificated shares to the incorporators.</p> <p>2.10 Determine how the company is to be controlled. Will all of the shareholders be involved in management? Can control be effectively exercised with provisions in the articles or is a shareholders' agreement required? If a shareholders' agreement is recommended, discuss and settle details with clients. (See the SHAREHOLDERS' AGREEMENT PROCEDURE (B-6) checklist and SHAREHOLDERS' AGREEMENT DRAFTING (B-7) checklist.)</p> <p>2.11 Advise the clients of rules pertaining to officers and directors, such as the duty of care, duty to comply with the <i>BCA</i>, notice of articles and articles, duty to disclose conflicts of interest including even an indirect interest in a contract or transaction with the company, and accountability for such contracts or transactions (<i>BCA</i>, ss. 136 to 158 (especially ss. 142, 147, 154, and 158)).</p> <p>Discuss potential personal liabilities, such as liabilities of directors under <i>BCA</i>, ss. 154 to 158, and under various statutes: <i>Income Tax Act</i> (Canada), R.S.C. 1985, c. 1 (5th Supp.); <i>Canada Pension Plan</i>, R.S.C. 1985, c. C-8; <i>Employment Insurance Act</i>, S.C. 1996, c. 23; <i>Bankruptcy and Insolvency Act</i> (Canada), R.S.C. 1985, c. B-3; <i>Workers Compensation Act</i>, R.S.B.C. 1996, c. 492; and under other legislation concerning environmental, securities, and consumer protection matters.</p> <p>2.12 Decide on the number of shares to be issued in each class, both initially (to the incorporator) and ultimately (to complete initial organization).</p> <p>.1 Decide whether the shares will be certificated or uncertificated (<i>BCA</i>, s. 107).</p> <p>.2 Decide on the issue price for the shares. Ensure that statutory requirements for issuance will be met (<i>BCA</i>, ss. 62 to 65). Ensure that directors satisfy themselves that the aggregate value of past services, property, and money equals or exceeds the issue price and that such value does not exceed fair market value.</p> <p>.3 Ensure that any other statutory requirements are met (e.g., <i>Legal Profession Act</i>, s. 82(1)(c) requires that only law corporations or members in good standing of the Law Society may hold voting shares in a law corporation).</p> <p>.4 Ensure that securities law requirements are met or that exemptions exist for the issuance of all shares.</p> <p>2.13 Determine whether the company will have a seal (<i>BCA</i>, s. 27(2)). Advise clients that a seal is not required under the <i>BCA</i>, but it may be required by banks and lending institutions. If the company will have a seal, determine who may affix it.</p> <p>2.14 Obtain the name, branch and address of the company's bank. Determine who will be the authorized signing officers.</p> |    |   |    |          |           |

| LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant<br>ACTION TO BE CONSIDERED   | NA | L | LA | DATE<br>DUE | DATE<br>DONE |
|---|----|---|----|-------------|--------------|
| <p>2.15 Determine whether the company will have an auditor, noting that all shareholders must agree to a waiver of auditor and such waiver is effective for one financial year only. If the company is to have an auditor, obtain the name and address of both the firm and the individual responsible. (Refer to <i>BCA</i>, Part 7, especially s. 204.)</p> <p>2.16 Obtain particulars of additional financial matters, including property to be purchased or leased, the intended financial year-end, borrowing details including securities, notes, debentures, and so on. Discuss income-tax planning, including tax elections that may be made upon acquisition of assets.</p> <p>2.17 Check whether clients entered into any pre-incorporation contracts and, if so, whether they should be adopted under <i>BCA</i>, s. 20.</p> |    |   |    |             |              |
| <p><b>3. AFTER THE INITIAL INTERVIEW</b></p>  |    |   |    |             |              |
| <p>3.1 Confirm your retainer and your instructions (see item 2.1 regarding potential conflicts of interest). Set out the manner in which the fees, disbursements, interest, and taxes will be determined (see <i>BC Code</i>, s. 3.6). In the case of a corporate client, confirm who is authorized to give you instructions. Check that you have a follow-up system to ensure that the clients return a signed copy of the retainer letter to you. Confirm compliance with the Law Society Rules on client identification and verification (see item 1.2).</p>   |    |   |    |             |              |
| <p>3.2 Conduct a name search in all available sources, including telephone directories and registers of partnership names. Consider a NUANS pre-search. Conduct a name search with the Corporate Registry and, if the name is available, reserve it for period of 56 days (<i>BCA</i>, s. 22(2)). The name may be reserved for any period longer than 56 days that the Registrar of Companies considers appropriate, and the registrar has the discretion to extend that period (<i>BCA</i>, ss. 22(2) and 22(3)). If the company intends to operate extraprovincially, make certain that the name is available in the other jurisdictions. Conduct trade-mark searches, if desired.</p>  |    |   |    |             |              |
| <p>3.3 Prepare a draft of the incorporation agreement (see <i>BCA</i>, s. 10(2) for requirements), incorporation application (<i>BCA</i>, s. 10(3)), notice of articles (<i>BCA</i>, s. 11), and articles (<i>BCA</i>, s. 12). Obtain standard-form bank resolutions from the clients' preferred bank.</p>  |    |   |    |             |              |
| <p>3.4 If required, prepare a draft shareholders' agreement.</p>  |    |   |    |             |              |
| <p>3.5 Check that the draft incorporation agreement, incorporation application, notice of articles, articles, and shareholders' agreement are in harmony and that a provision in one does not contradict what is attempted in another. If appropriate, write a letter to the clients explaining the effect of the draft incorporation agreement, incorporation application, notice of articles, articles, and shareholders' agreement. When the clients have confirmed that these drafts are acceptable, prepare the final form of incorporation agreement, incorporation application, notice of articles, articles, and shareholders' agreement.</p>   |    |   |    |             |              |
| <p>3.6 Arrange a meeting with the client(s) to sign the incorporation agreement and articles; alternatively, arrange for signing remotely and return of the documents to your office.</p>   |    |   |    |             |              |

| LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant<br>ACTION TO BE CONSIDERED  | NA | L | LA | DATE DUE | DATE DONE |
|--|----|---|----|----------|-----------|
| <p>3.7 File the incorporation application electronically with the Corporate Registry (with the notice of articles) and pay the required incorporation fee.</p> <p>3.8 Obtain the certificate of incorporation and advise the client of its receipt.</p>  |    |   |    |          |           |
| <p><b>4. PROCEEDINGS BY INCORPORATORS</b></p>  |    |   |    |          |           |
| <p>4.1 Obtain written consents from the persons who will be the first directors (<i>BCA</i>, s. 123).</p>  |    |   |    |          |           |
| <p>4.2 Obtain written confirmation of payment for incorporators' shares (<i>BCA</i>, s. 64), even if the law firm or one of its employees is the incorporator.</p>   |    |   |    |          |           |
| <p>4.3 If no auditor is to be appointed, prepare a waiver for the current financial year and have it executed by all incorporators (<i>BCA</i>, s. 203). Consider whether this waiver should be given by the permanent shareholders rather than the incorporators.</p>   |    |   |    |          |           |
| <p>4.4 Prepare a resolution of incorporators setting the inspection hours for the records office (<i>BCA</i>, s. 46(8) and <i>BCA</i> Regulation, s. 13; also see the definition of "ordinary resolution" in <i>BCA</i>, s. 1). Consider whether this should be a resolution of the permanent shareholders rather than of the incorporators. Ensure that the clients are aware of requirements regarding examination of records (<i>BCA</i>, s. 46).</p> |    |   |    |          |           |
| <p><b>5. PREPARATION FOR FIRST MEETING OF DIRECTORS</b></p>  |    |   |    |          |           |
| <p>5.1 Obtain subscriptions for the shares to be issued to permanent shareholders.</p>   |    |   |    |          |           |
| <p>5.2 Obtain written confirmation of payment for the shares to be issued.</p>   |    |   |    |          |           |
| <p>5.3 Prepare minutes of directors' meeting or resolutions in writing of all directors (<i>BCA</i>, s. 140(3)) to:</p>  |    |   |    |          |           |
| <p>.1 Issue the incorporators' shares (take care determining the price if the shares are without par value) and authorize the execution and delivery of share certificates evidencing the incorporators' shares.</p>   |    |   |    |          |           |
| <p>.2 Approve the transfers of incorporators' shares to permanent shareholders or, alternatively, the repurchase of incorporators' shares.</p>   |    |   |    |          |           |
| <p>.3 Issue all shares subscribed for by the permanent shareholders (take care determining the price if the shares are without par value) and authorize the execution and delivery of share certificates evidencing the shares issued (or the issuance of uncertificated shares, as applicable); in doing so, consider how to comply with the conflict of interest rules (see <i>BCA</i>, ss. 147 to 153):</p>   |    |   |    |          |           |
| <p>(a) if not all of the directors will be subscribing for shares, then the directors who are not interested should pass the resolution issuing all shares (other than incorporators' shares) to interested directors and others (see <i>BCA</i>, s. 149(2), which prohibits a director with a disclosable interest from voting on the corresponding resolution);</p>  |    |   |    |          |           |
| <p>(b) if all of the directors will be subscribing for shares, then any or all of the interested directors may pass the directors' resolution issuing the shares (see <i>BCA</i>, s. 149(3)), or else prepare a special resolution approving the issue of shares.</p>  |    |   |    |          |           |

| LEGEND — <b>NA</b> = Not applicable <b>L</b> = Lawyer <b>LA</b> = Legal assistant<br>ACTION TO BE CONSIDERED   | NA | L | LA | DATE<br>DUE | DATE<br>DONE |
|--|----|---|----|-------------|--------------|
| <p>.4 Appoint officers, fix the quorum for directors’ meetings, fix the financial year-end, appoint the company’s bank and adopt a banking resolution, appoint an agent to maintain the records and registered offices and approve a contract with that agent, confirm the location of the accounting records, and appoint an auditor (unless waived).</p> <p>.5 Adopt pre-incorporation contracts (<i>BCA</i>, s. 20), if any.</p> <p>.6 If a meeting is to be held, note requirements for notices, waivers, and quorum. If using resolutions in writing, these must be signed by all directors entitled to vote on the resolution (<i>BCA</i>, s. 140(3)).</p> <p>5.4 Prepare share certificates for the incorporators’ shares and the shares issued to the permanent shareholders (see requirements in <i>BCA</i>, ss. 57, 107, and 110).</p> <p>5.5 If appropriate, prepare declarations of trust if any shares are being held by a nominee or trustee. Ensure that clients have been given adequate advice with respect to income-tax implications, legal difficulties in dealing with shares, and so on, particularly in the case of trusts for minors.</p> <p>5.6 Prepare a resolution to approve a shareholders’ agreement (if any).</p> <p>5.7 Advise the clients to ensure that company records are kept in a manner that meets requirements (<i>BCA</i>, s. 44) and that the company and its agents must take adequate precautions with respect to the registers and records.</p> <p>5.8 Attend to such of the following matters as are applicable:</p> <p>.1 Extraprovincial registration resolutions and documents.</p> <p>.2 Purchase of assets, resolutions, documents and registrations.</p> <p>.3 Indemnity agreements for directors.</p> <p>.4 Possible insurance for directors or officers or both.</p> <p>.5 Any committees.</p> <p>.6 Set up bank account and execute banking documents.</p> <p>.7 Arrange for setting up accounting records and determine location.</p> <p>.8 Settle borrowing requirements and documents.</p> |    |   |    |             |              |
| <p><b>6. PREPARATION FOR FIRST MEETING OF NEW SHAREHOLDERS</b></p> <p>6.1 If no auditor is to be appointed and if the waiver has not already been given by the incorporators, prepare a waiver for the current financial year and have it executed by all shareholders (including those holding non-voting shares) (<i>BCA</i>, s. 203).</p> <p>6.2 If not already done by the incorporators, prepare a resolution of permanent shareholders setting inspection hours for the records office (<i>BCA</i>, s. 46(8) and <i>BCA</i> Regulation, s. 13; also see definition of “ordinary resolution” in <i>BCA</i>, s. 1). Ensure that the clients are aware of requirements regarding examination of records (<i>BCA</i>, s. 46). If attending a meeting, watch that requirements as to notice, waiver, quorum, and so on are observed.</p>  |    |   |    |             |              |

| LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant<br>ACTION TO BE CONSIDERED   | NA | L | LA | DATE<br>DUE | DATE<br>DONE |
|---|----|---|----|-------------|--------------|
| <p>6.3 If necessary, prepare special resolutions of shareholders (see definition of “special resolution” in <i>BCA</i>, s. 1) to approve any contracts or transactions where there are no disinterested directors. If attending a meeting, watch that requirements as to notice, waiver, quorum, and so on are observed.</p>  |    |   |    |             |              |
| <p><b>7. EXECUTION OF DOCUMENTS</b></p>   |    |   |    |             |              |
| <p>7.1 Arrange for the various documents referred to in items 3, 4, 5, and 6 to be executed by the appropriate parties.</p>   |    |   |    |             |              |
| <p><b>8. FILE IN RECORDS OFFICE (MINUTE BOOK)</b></p>   |    |   |    |             |              |
| <p>8.1 Keep copies of documents required to be kept at the records office pursuant to <i>BCA</i>, s. 42 (see §8.95 of the <i>B.C. Company Law Practice Manual</i>).</p>   |    |   |    |             |              |
| <p>8.2 Carefully comply with the date and time recording requirements in <i>BCA</i>, s. 44(3).</p>  |    |   |    |             |              |
| <p>8.3 Familiarize yourself with the categories of documents that may be inspected under the <i>BCA</i> by: current directors (<i>BCA</i>, s. 46(1)), current shareholders (<i>BCA</i>, s. 46(1) and (3)), former directors (<i>BCA</i>, s. 46(2)), former shareholders (<i>BCA</i>, s. 46(3)), and any person (<i>BCA</i>, s. 46(1), (4), and (5)).</p>  |    |   |    |             |              |
| <p><b>9. MISCELLANEOUS STEPS</b></p>  |    |   |    |             |              |
| <p>9.1 Notice to auditor (if applicable).</p>   |    |   |    |             |              |
| <p>9.2 If you are retained to maintain the records office of the company, diarize relevant dates. The annual report (<i>BCA</i>, s. 51) contains information as of the anniversary of the date the company was recognized, and must be filed within two months of that anniversary date. The annual general meeting or annual consent resolutions (<i>BCA</i>, s. 182) must be held within 15 months after the annual reference date, and the first annual general meeting must be held within 18 months of the date the company was recognized (<i>BCA</i>, s. 182(1)(a)).</p> |    |   |    |             |              |
| <p>9.3 Advise the clients to ensure that the correct legal name of the company (in addition to optional use of any division or business name) is properly displayed on all documents, forms (including cheques and invoices) and signs (<i>BCA</i>, s. 27).</p>   |    |   |    |             |              |
| <p>9.4 Consider registering names of operating divisions of the company or other names under which it will carry on business (may be registered under the <i>Partnership Act</i>, R.S.B.C. 1996, c. 348).</p>   |    |   |    |             |              |
| <p>9.5 Pursue trade-mark registration of the name, if instructed.</p>   |    |   |    |             |              |
| <p>9.6 Forward a reporting letter and statement of account to the clients. For tax deductibility, consider providing one account for fees and disbursements relating to incorporation and a separate account for those relating to post-incorporation organization of the company.</p>  |    |   |    |             |              |
| <p>9.7 Close the incorporation file. Consider storage and destruction requirements. See <i>Closed Files—Retention and Disposition</i>, August 2017, Appendix B at <a href="http://www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/ClosedFiles.pdf">www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/ClosedFiles.pdf</a>.</p>   |    |   |    |             |              |

| LEGEND — <b>NA</b> = Not applicable <b>L</b> = Lawyer <b>LA</b> = Legal assistant<br>ACTION TO BE CONSIDERED   | NA | L | LA | DATE<br>DUE | DATE<br>DONE |
|--|----|---|----|-------------|--------------|
| <p>9.8 If you are retained to maintain the records or registered office (or both) of the company, open a separate file for maintaining corporate records. Consider and comply with the Law Society Rules on client identification and verification (see item 1.2), especially if the instructing individual for the company is changing.</p> |    |   |    |             |              |