

INTRODUCTION

Purpose and currency of checklist. This checklist is designed to be used with the CLIENT IDENTIFICATION, VERIFICATION, AND SOURCE OF MONEY (A-1) checklist and CLIENT FILE OPENING AND CLOSING (A-2) checklist. It is intended for use as a guide to incorporation of companies under the British Columbia *Business Corporations Act*, S.B.C. 2002, c. 57. The checklist is current to September 4, 2024.

LEGEND



Checkbox



Important Reminder



Deadline or Limitation Date

NEW DEVELOPMENTS

- **Investment Canada Act.** Recent amendments to the *Investment Canada Act*, R.S.C. 1985, c. 28 (1st Supp.) and changes to policy announced by the Minister of Innovation, Science and Industry (the “Minister”) continue to address changing threats that can arise from foreign investment.
- **Modernization.** *An Act to Amend the Investment Canada Act*, S.C. 2024, c. 4 received Royal Assent on March 22, 2024, with amendments coming into force September 3, 2024. The amendments further the Minister’s ability to detect, review, and restrict foreign investments that are potentially injurious to Canadian national security.
- **Investment digital media sector.** Foreign investors and Canadian businesses in the investment digital media sector (the “IDM sector”) must review their investment plans for potential connections to entities owned or influenced by hostile foreign states and consult with Innovation, Science and Economic Development Canada’s Investment Review Division at least 45 days before implementing any investment. Foreign investors in Canada’s IDM sector must ensure their investments support the creation and retention of Canadian intellectual property and comply with stringent undertakings and possible reviews for net benefit by the Minister of Canadian Heritage, focusing on maintaining Canadian control and cultural expression.
- **Land Owner Transparency Act.** The *Land Owner Transparency Act*, S.B.C. 2019, c. 23 (the “LOTA”) requires a transparency declaration, or report (if applicable), to be filed with the Land Owner Transparency Registry (the “LOTR”) any time an application is made to register or transfer an interest in land under the *Land Title Act*, R.S.B.C. 1996, c. 250. A reporting body under the LOTA—which includes most corporations, trusts, and partnerships, subject to limited exceptions—must file a transparency report any time there is a change in interest holders or beneficial owners, even if legal title is not transferred. Amendments to the LOTA came into effect November 20, 2023, and include new definitions for “Surveyor of Taxes” and “transferee”. The amendments are to enhance the accuracy and completeness of transparency declarations and provide the ability to correct previously filed transparency declarations (s. 10.2), particularly where information was incorrect, or a reporting body was omitted (s. 15.2). Additionally, reporting bodies are now required to file a transparency report within two months after receiving a notification from the Surveyor of Taxes regarding a revested property (s. 15.1). For further information, see the Land Owner Transparency Registry website and also the course presentation and materials by S. Carter, R. Danakody, and C.R. MacDonald, “Land Title and Survey Authority of British Columbia: Land Owner Transparency Registry” in *Residential Real Estate Conference 2020* (CLEBC, 2020), and

R. Danakody and T. Norman, “Land Owner Transparency Registry (LOTR)” in *Real Estate Development Update 2021* (CLEBC, 2021), available through CLEBC Courses on Demand.

- **Transparency register.** Private companies incorporated under the *Business Corporations Act* must create and maintain a “transparency register” of information about “significant individuals” (as defined by s. 119.11 of the *Business Corporations Act*). Consult the *Business Corporations Act* and British Columbia government websites to confirm compliance. The *Business Corporations Amendment Act, 2023*, S.B.C. 2023, c. 20 will introduce a new corporate transparency registry and transparency requirements by 2025.
- **Canada Business Corporations Act.** Amendments to the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 (the “CBCA”), which took effect August 31, 2022, require distributing corporations (generally only public companies which are governed under the CBCA) to comply with new requirements with respect to the election of directors. Note the amendments in s. 106 of the CBCA, with respect to “majority voting” and “individual election” requirements. Accordingly, if a CBCA company is being incorporated, and particularly if it may become a reporting issuer, attention should be given to the company’s articles with respect to electing and appointing its directors. As of January 22, 2024, corporations created under the CBCA are required to file information regarding individuals with significant control (“ISC”) with Corporations Canada and to keep a copy of their ISC register with their corporate records.
- **Purpose-built rental exemption.** Effective January 1, 2024, certain new purpose-built rental buildings are exempt from the further 2% property transfer tax applied to residential property values that exceed \$3,000,000 and meet the eligibility requirements.
- **Resolutions upheld despite being made during annual general meeting not called in accordance with company’s articles.** In *Yinghe Investment (Canada) Ltd. v. CCM Investment Group Ltd.*, 2024 BCCA 285, a dispute arose when an annual general meeting was held without proper adherence to the company’s articles (the meeting was called by a single director instead of the required plural “directors”). The court found that the chambers judge did not err in exercising his discretion under s. 229 of the *Business Corporations Act*, as the decision to allow certain resolutions to stand was made in the company’s best interests.
- **Revocability of a shotgun offer.** In *Blackmore Management Inc. v. Carmanah Management Corp.*, 2022 BCCA 117, supplementary reasons 2022 BCCA 235, the court applied the principles of contractual interpretation to a shotgun clause in a shareholders’ agreement. The court reversed the trial decision and held that an offer made under a shotgun clause will not be irrevocable in the absence of express language in the agreement to the contrary, as revocability is an important consideration in the drafting of shotgun clauses. To achieve the intended result of a shotgun mechanism, typically the offer must be irrevocable. Consistent with this notion, the court concluded that it would be inconsistent with the purpose of shotgun clauses if parties could revoke an offer they have come to regret. As a result of this decision, in the atypical situation where the parties intend for a shotgun offer to be revocable, this intention should be expressly set out in the agreement. In all other circumstances, it is best practice to expressly state that the offer is irrevocable. Note that the Court of Appeal granted a stay of its order pending an application for leave to the Supreme Court of Canada; counsel should stay apprised of further updates.

- **Greenwashing provisions of the *Competition Act*.** The *Competition Act*, R.S.C. 1985, c. C-34 added new provisions that took effect June 20, 2024. The new provisions require companies making environmental claims about their products or services must support these claims with adequate and proper testing. Furthermore, any statements regarding the environmental benefits of a business or its activities must not be substantiated using “internationally recognized methodologies”.

OF NOTE

- **Aboriginal law.** Special considerations apply to businesses involving Indigenous persons and lands belonging to First Nations. While significant tax and other advantages may be available under the *Indian Act*, R.S.C. 1985, c. I-5, such advantages are affected by the following: the type of business; transaction nature; business entity (sole proprietorship, partnership, joint venture, trust, or incorporated company); location of business activity (either on or off First Nations lands); and the specific First Nation and its applicable governance. Effective May 11, 2023, the *Budget Measures Implementation Act, 2023* came into force, amending the *Treaty First Nation Taxation Act*, S.B.C. 2007, c. 38, and the *Nisga’a Final Agreement Act*, S.B.C. 1999, c. 2. These legislative amendments allow taxing treaty First Nations and the Nisga’a nation, respectively, to implement tax exemptions for property on their lands. If the transaction involves First Nations land, consider seeking the advice of a lawyer who has experience in Aboriginal law matters. Further information on Aboriginal law issues is available on the “Aboriginal Law” page on the “Practice Areas” section of the Continuing Legal Education Society of British Columbia website (www.cle.bc.ca) and in other CLEBC publications. See also *Negotiating & Structuring Business Transactions with First Nations 2011* (CLEBC, 2011).
- **Money laundering—companies, trusts, and other entities.** As a means of laundering money, criminals use ordinary legal instruments (such as shell and numbered companies, bare trusts, and nominees) in the attempt to disguise the true owners of real property, the beneficial owners. These efforts can be hard to detect. As such, lawyers must assess the facts and context of the proposed retainer and financial transactions. Lawyers should be aware of red flags and if a lawyer has doubts or suspicions about whether they could be assisting in any dishonesty, crime or fraud, they should make enough inquiries to determine whether it is appropriate to act and make a record of the results of their inquiries (*BC Code* rules 3.2-7 and 3.2-8 and Law Society Rules 3-103(4), 3-109, and 3-110). See the anti-money laundering resources on the Law Society’s “Client ID & Verification” [webpage](#), including: “Forming Companies and Other Structures—Managing the Risk”; “Source of Money FAQs”; “Risk Assessment Case Studies for the Legal Profession”; “Red Flags Quick Reference Guide”; “Risk Advisories for the Legal Profession”; and free online Law Society and Federation of Law Societies courses. Also see the Discipline Advisories (an updated list can be found at www.lawsociety.bc.ca/for-lawyers/discipline-advisories/), which include topics such as Securities fraud: Micro-cap stocks, Client ID and Verification, Country/geographic risk and Private lending. Lawyers may contact a Law Society practice advisor at practiceadvice@lsbc.org for a consultation about the applicable *BC Code* rules and Law Society Rules and obtain guidance.
- **Tax alert.** As some aspects of a shareholders’ or partnership agreement may have significant tax implications for the parties, it is recommended the parties seek advice from their respective tax advisors.
- **Law Society of British Columbia.** For changes to the Law Society Rules and other Law Society updates and issues “of note”, see LAW SOCIETY NOTABLE UPDATES LIST (A-3).

- **Additional resources.** For detailed information about incorporation procedures, see *British Columbia Company Law Practice Manual*, 2nd ed. (CLEBC, 2003–); *Company Law Deskbook* (CLEBC, 2006–); and *Advising British Columbia Businesses* (CLEBC, 2006–).


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1.	INITIAL CONTACT	
1.1	Arrange the initial interview and ask client to bring any relevant documents.	<input type="checkbox"/>
1.2	Conduct a conflicts of interest check and refer to the CLIENT FILE OPENING AND CLOSING (A-2) checklist.	<input type="checkbox"/>
1.3	Confirm compliance with Law Society Rules 3-98 to 3-110 for client identification and verification and the source of money for financial transactions and complete the CLIENT IDENTIFICATION, VERIFICATION, AND SOURCE OF MONEY (A-1) checklist. Consider periodic monitoring requirements (Law Society Rule 3-110).	<input type="checkbox"/>
1.4	Know your client and understand the purpose of the incorporation. Understand the client's financial dealings in relation to the retainer and manage any risks arising from your professional business relationship. Criminals sometimes use corporations and trusts to facilitate complex money laundering schemes. Consult the LAW SOCIETY NOTABLE UPDATES LIST (A-3) and Money laundering—companies, trusts, and other entities” in the “Of note” section of this checklist for resources to assist you in combatting money laundering. Consider <i>Code of Professional Conduct for British Columbia</i> (the “BC Code”), rules 3.2-7 to 3.2-8 and their commentaries and Law Society Rules 3-109 and 3-110.	<input type="checkbox"/>

2.	INITIAL INTERVIEW	
2.1	Determine for whom you will act (for example, the company or one or all of the shareholders).	<input type="checkbox"/>
	.1 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, and refer to item 2.4 in the CLIENT FILE OPENING AND CLOSING (A-2) checklist. 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). If you are acting for a company, unless acting under a joint retainer, be clear that you are acting for the company and not for individuals associated with the company, such as the shareholders or directors (<i>BC Code</i> , rule 3.2-3). If applicable, urge others, in writing, to get independent legal representation. Make it clear that you are not protecting their interests, and that you are acting exclusively in the interests of your client (<i>BC Code</i> , rule 7.2-9).	
	.2 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 (<i>BC Code</i> , rule 3.2-3, Commentary [1]). Consider a directors' resolution authorizing a certain person to give you instructions.	
	.3 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, 7.2-6.1, 7.2-8, and 7.2-9).	
2.2	Discuss and confirm the terms of your retainer and the calculation of your fee. Refer to the CLIENT FILE OPENING AND CLOSING (A-2) checklist.	<input type="checkbox"/>
2.3	Determine what your clients wish to accomplish by incorporation. Will incorporation meet their goals or is another business structure better suited?	<input type="checkbox"/>
	.1 See chapter 1 (Initial Considerations in Advising a Business) of <i>Advising British Columbia Businesses</i> (CLEBC, 2006–) for a more detailed discussion of considerations regarding the appropriate business structure for your clients.	
	Consider matters such as:	
	.2 Ownership of the equity of the proposed company both immediately at incorporation and in the near-term following incorporation.	
	.3 Control of the voting rights of the proposed company.	
	.4 Who the directors responsible for overseeing management and the officers in charge of day-to-day operations and the employees will be.	
	.5 Financing of the business through debt and equity financing options.	
	.6 Whether the business is likely to expand, and, if so, whether clients are planning to offer further shares to investors at a later date. If so, explain securities law requirements and possible exemptions or consult with a securities lawyer.	
	.7 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?	


	.8 If the business already exists, what legal structure is being used to operate the business?	
	.9 What assets and liabilities will be acquired by the proposed company; how will they be paid for?	
	(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.	
	.10 How successful will the business be at the time of incorporating the proposed company?	
	(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?	
	.11 Will employees be allowed to participate in earnings or equity?	
	(a) If stock options or other securities are contemplated, then explain securities law requirements or consult with a securities lawyer.	
	.12 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.	
	.13 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). Make sufficient enquiries to ensure that you are not facilitating incorporation of a company for an improper purpose (<i>BC Code</i> rules 3.2-7 to 3.2-8 and Law Society Rules 3-109 and 3-110).	
	.14 Whether the company needs a GST, PST, or WorkSafeBC registration; consider directing your client to the website (www.bcregistry.gov.bc.ca) for registrations with various public agencies. Further information about GST and PST is available at www.canada.ca/en/revenue-agency/services/tax/businesses/topics/gst-hst-businesses.html and www2.gov.bc.ca , respectively. Consider referring the client to an accountant for further discussion regarding tax and related compliance matters.	
2.4	Discuss the effect of incorporation, including:	<input type="checkbox"/>
	.1 the separate legal existence of a company, the distinction between the position and authority of directors and shareholders;	
	.2 broadly explaining that different income tax rules will apply to the company and shareholders and recommending the client obtains accounting and tax advice from an accountant; and	
	.3 ongoing filing and administrative requirements to keep the company in good standing.	

2.5	If the decision is made to incorporate, advise the clients of the advantages and disadvantages of incorporating a company under provincial law (the <i>Business Corporations Act</i> , S.B.C. 2002, c. 57 (the “BCA”)), 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).	<input type="checkbox"/>
	.1 Determine under which regime the clients wish to incorporate.	
	.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 extra-provincial registrations where business is carried on.	
	.3 Consider consulting agents in other jurisdictions to determine extra-provincial registration requirements, as these requirements could affect the share structure.	
	.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 American investors in Canada, as it offers certain tax benefits in the United States.	
	.5 Part 2.2 of the <i>BCA</i> concerns the incorporation and legislative regulation of community contribution companies (“C3s”). A C3 is limited in its ability to distribute profits but may distribute profits for community purposes.	
	.6 Part 2.3 of the <i>BCA</i> concerns the incorporation and legislative regulation of benefit companies. A benefit company is a for-profit company which conducts business in a sustainable and responsible manner, while promoting one or more public benefits. See “Benefit companies” in the “New developments” section of this checklist.	
	.7 Explain the transparency register requirements in British Columbia, and compare those requirements with any equivalent provisions in other jurisdictions. See “Transparency register” in the “New developments” section of this checklist.	
	The balance of this checklist deals with incorporation of a company (excluding ULCs, C3s, and benefit companies) under the <i>BCA</i> . While some of this information is also applicable to the incorporation of a ULC, C3, or a benefit company, specific requirements relating to ULCs, C3s, and benefit companies are set out in Parts 2.1, 2.2, and 2.3 of the <i>BCA</i> .	
2.6	Discuss and decide on the contents of the incorporation agreement, incorporation application, and notice of articles. Matters to consider include:	<input type="checkbox"/>
	.1 Proposed name of the company and alternative choices (check precise spelling, punctuation, and capitalization, and see <i>BCA</i> , ss. 21 to 29).	
	(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.	
	(b) A company name must have a distinctive element, a descriptive element, and a corporate designation (e.g., ABC Manufacturing Limited).	
	(c) Consider doing an informal preliminary name check.	

	(d) Find out whether the clients want trademark searches, and/or name searches for extra-provincial registration in other provinces.	
	(e) Consider whether the NWPTA applies.	
	(f) Find out whether the company name will be used in connection with providing goods and services to the public and whether trademark 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>Trademarks 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.	
	.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, and accordingly if the client anticipates that it will do business in Quebec or other French-speaking regions, then it may be advantageous to incorporate under a name in both languages (although this can also occur later through a corporate name change to add the desired French name).	
	.3 Authorized share structure (see <i>BCA</i> , ss. 52, 53, 59, and 60). If the clients have retained accountants, consult with them. Consider:	
	(a) Any reason for having shares of more than one class.	
	(b) Purposes for the different classes of shares.	
	(c) 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 wind-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.	
	(d) Whether special rights or restrictions should provide that shares may be issued in one or more series.	
	(e) In consultation with accountants, whether shares should be with or without par value (and, if with par value, whether there is any reason for par value to be in a foreign currency).	
	(f) Number of shares needed immediately.	
	(g) Number of shares likely to be needed in the future.	
	(h) Any reason for limits on the number of shares the company is authorized to issue.	
	(i) Whether the company will be registered in other jurisdictions having a tax or fee dependent on the number of shares authorized.	
	.4 The location of the company's records and registered offices.	
	(a) Obtain full street address or other sufficient description of location in British Columbia (refer to the <i>BCA</i> , ss. 34, 42 to 46, and 48.)	

	(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)) and that such address must be open for inspection of certain records during certain business hours. 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.	
	(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 s. 9 of the <i>BCA</i> , regarding service.	
	.5 Directors.	
	(a) Ensure that the number of directors is correct (at least one for a B.C. or federally-incorporated private company and at least three for a public company (<i>BCA</i> , ss. 51.93 and 120)).	
	(b) Check that the directors have the necessary qualifications (<i>BCA</i> , ss. 124 and 125).	
	(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).	
	(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 (the “BCA Regulation”), s. 2.	
	(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.	
	(f) Explain that fiduciary and statutory obligations apply to all directors (see items 2.10 and 2.11 of this checklist).	
2.7	Determine the contents of the articles (see <i>BCA</i> , s. 12).	<input type="checkbox"/>
	.1 Consider whether there should be any business or power restrictions (generally not recommended unless required by specific legislation).	
	.2 Consider the matters that may be included in the articles set out in chapter 4 (Incorporation and Organization) of <i>British Columbia Company Law Practice Manual</i> , 2nd ed. (CLEBC, 2003–).	

	.3 If using Table 1 articles (see <i>BCA</i> , s. 12(4); <i>BCA</i> 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.	
	.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.	
	If drafting or tailoring articles, matters to consider include the following:	
	.5 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?	
	.6 Should there be pre-emptive rights on the issue of shares?	
	.7 Should repurchases or redemptions of shares, or both, be pro rata?	
	.8 Determine the type of resolution to use in order to carry out certain corporate acts.	
	(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).	
	(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).	
	.9 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.	
	.10 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.	
	.11 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 through electronic (virtual) meetings.	
	.12 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.	
	.13 Consider whether the articles should provide for the transfer of the powers of the directors to other persons (typically the shareholders).	

	.14 Consider whether to include a shareholder's right to demand a share certificate for shares issued as uncertificated shares.	
	.15 Consider whether to include a casting vote with respect to director meetings.	
2.8	Determine who the incorporators will be (individuals or corporations), including full names and the number of voting shares they will subscribe for.	<input type="checkbox"/>
2.9	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.)	<input type="checkbox"/>
2.10	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, disclosable interests 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).	<input type="checkbox"/>
2.11	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. 2019, c. 1; and under other legislation concerning environmental, securities, and consumer protection matters.	<input type="checkbox"/>
2.12	Decide on the number of shares to be issued in each class, both initially (to the incorporators) and ultimately (to complete initial organization).	<input type="checkbox"/>
	.1 Decide whether the shares will be certificated or uncertificated (<i>BCA</i> , s. 107). Particularly, if the incorporators will be immediately disposing of their shares, consider issuing uncertificated shares to the incorporators.	
	.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. Communicate that shares cannot be issued to a shareholder for future consideration from that shareholder.	
	If the shares have a par value, the shares must be issued for at least the amount of the par value; the shares can be issued for an amount greater than the par value, but not less.	
	.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 practising lawyer in good standing of the Law Society may hold voting shares in a law corporation; professional companies under the <i>Health Professions Act</i> , R.S.B.C. 1996, c. 183 are subject to similar requirements).	
	.4 Ensure that securities law requirements are met or that exemptions exist for the issuance of all shares.	

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.	<input type="checkbox"/>
2.14	Obtain the name, branch, and address of the company's bank. Determine who will be the authorized signing officers.	<input type="checkbox"/>
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 the <i>BCA</i> , Part 7, especially s. 204.)	<input type="checkbox"/>
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.	<input type="checkbox"/>
2.17	Check whether clients entered into any pre-incorporation contracts and, if so, whether they should be adopted under s. 20 of the <i>BCA</i> .	<input type="checkbox"/>
2.18	If you are not in a position to act, advise the client. Make a record of the advice given, and file your notes. Send a non-engagement letter (for samples, see the Law Society resource available at www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/Ltrs-NonEngagement.pdf (PDF).	<input type="checkbox"/>

3.	AFTER THE INITIAL INTERVIEW	
3.1	Confirm your retainer and your instructions; see item 2.1 in this checklist regarding potential conflicts of interest, and refer to the CLIENT FILE OPENING AND CLOSING (A-2) checklist. 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 1.3 in this checklist).	<input type="checkbox"/>
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> , s. 22(2) and (3)). If the company intends to operate extra-provincially, make certain that the name is available in the other jurisdictions. Conduct trademark searches, if desired.	<input type="checkbox"/>
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).	<input type="checkbox"/>
3.4	If required, prepare a draft shareholders' agreement.	<input type="checkbox"/>

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.	<input type="checkbox"/>
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. If the incorporator is the law firm, a company incorporated by the law firm for the purpose of acting as incorporator, or an employee of the firm, arrange for the incorporation agreement and articles to be signed.	<input type="checkbox"/>
3.7	File the incorporation application electronically with the Corporate Registry (with the notice of articles) and pay the required incorporation fee.	<input type="checkbox"/>
3.8	Obtain the certificate of incorporation and advise the client of its receipt.	<input type="checkbox"/>

4.	PROCEEDINGS BY INCORPORATORS	
4.1	Obtain written consents from the persons who will be the first directors (<i>BCA</i> , s. 123).	<input type="checkbox"/>
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.	<input type="checkbox"/>
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.	<input type="checkbox"/>
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).	<input type="checkbox"/>

5.	PREPARATION FOR FIRST MEETING OF DIRECTORS	
5.1	Obtain subscriptions for the shares to be issued to permanent shareholders.	<input type="checkbox"/>
5.2	Obtain written confirmation of payment for the shares to be issued.	<input type="checkbox"/>
5.3	Prepare minutes of directors' meeting or resolutions in writing of all directors (<i>BCA</i> , s. 140(3)) to:	<input type="checkbox"/>

	.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, or written acknowledgements of rights to receive share certificates (<i>BCA</i> , s. 107(3) for certificated shares, or a s. 107(6) notice containing the required s. 57 information for uncertificated shares, evidencing the incorporators' shares.	
	.2 Approve the transfers of incorporators' shares to permanent shareholders or, alternatively, the repurchase of incorporators' shares.	
	.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, written acknowledgments or notices (as applicable pursuant to <i>BCA</i> s. 107; see item 5.3.1 in this checklist) evidencing the shares issued; in doing so, consider how to comply with the conflict of interest rules (see <i>BCA</i> , ss. 147 to 153):	
	(a) if not all of the directors will be subscribing for shares, 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);	
	(b) if all of the directors will be subscribing for shares, 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.	
	.4 Appoint officers (including obtaining any officer consents required), 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).	
	.5 Adopt pre-incorporation contracts (<i>BCA</i> , s. 20), if any.	
	.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)).	
5.4	Prepare share certificates or written acknowledgments of rights to receive shareholders for the incorporators' shares and the shares issued to the permanent shareholders (see requirements in <i>BCA</i> , ss. 57, 107, and 110) or written notices, if applicable. Written notices in compliance with <i>BCA</i> s. 107(6) containing the required s. 57 information must be sent to the shareholders when the directors have provided by resolution that the applicable shares must be uncertificated.	<input type="checkbox"/>
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.	<input type="checkbox"/>
5.6	Prepare a resolution to approve a shareholders' agreement (if any).	<input type="checkbox"/>

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.	<input type="checkbox"/>
5.8	Attend to such of the following matters as are applicable:	<input type="checkbox"/>
	.1 Extra-provincial registration resolutions and documents.	
	.2 Purchase of assets, resolutions, documents and registrations.	
	.3 Indemnity agreements for directors.	
	.4 Possible insurance for directors or officers or both.	
	.5 Any committees.	
	.6 Set up bank account and execute banking documents.	
	.7 Arrange for the set-up of accounting records and determine location.	
	.8 Settle borrowing requirements and documents.	
	.9 Obtain the relevant information for and list the “significant individuals” in the transparency register (see “Transparency register” under “New developments” in this checklist).	

6.	PREPARATION FOR FIRST MEETING OF NEW SHAREHOLDERS	
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).	<input type="checkbox"/>
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.	<input type="checkbox"/>
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.	<input type="checkbox"/>

7.	EXECUTION OF DOCUMENTS	
7.1	Arrange for the various documents referred to in items 3, 4, 5, and 6 of this checklist to be executed by the appropriate parties.	<input type="checkbox"/>

8. FILE IN RECORDS OFFICE (MINUTE BOOK)		
8.1	Keep copies of documents required to be kept at the records office pursuant to the <i>BCA</i> , s. 42 (see chapter 8 (Ordinary Corporate Procedures) of the <i>British Columbia Company Law Practice Manual</i> , 2nd ed. (CLEBC, 2003—)).	<input type="checkbox"/>
8.2	Carefully comply with the date and time recording requirements in <i>BCA</i> , s. 44(3).	<input type="checkbox"/>
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)).	<input type="checkbox"/>

9. MISCELLANEOUS STEPS		
9.1	Notice to auditor (if applicable).	<input type="checkbox"/>
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 at least once in each calendar year and 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)).	<input type="checkbox"/>
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).	<input type="checkbox"/>
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).	<input type="checkbox"/>
9.5	Pursue trademark registration of the name, if instructed.	<input type="checkbox"/>

10. CLOSING THE FILE		
10.1	Prepare a reporting letter and account as soon as practicable after closing. 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.	<input type="checkbox"/>
10.2	Close the incorporation file. See the CLIENT FILE OPENING AND CLOSING (A-2) checklist.	<input type="checkbox"/>

10.3	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 1.3 of this checklist), especially if the instructing individual for the company is changing. Refer to the CLIENT FILE OPENING AND CLOSING (A-2) checklist where appropriate.	<input type="checkbox"/>
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