

ACTION TO BE CONSIDERED	NOTES
<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) and SHAREHOLDERS' AGREEMENT PROCEDURE (B-6) checklists. Both checklists are intended for a company governed by the <i>Business Corporations Act</i>, S.B.C. 2002, c. 57 (the "BCA"). The provisions suggested in this checklist must be considered in relation to the particular facts in the matter at hand, and augmented and revised as appropriate. This checklist is current to September 1, 2018.</p> <p>A shareholders' agreement will change the dynamics among the shareholders of a company from that which exists under the basic corporate law. Majority shareholders should understand they will likely give up rights and powers they would have as the majority controlling the right to elect a majority of the board of directors. Minority shareholders will gain rights and powers they would not otherwise have as minority shareholders. The majority should appreciate that their power as a majority could be effectively lost if, for example, they commit to allowing the board of directors to be composed of a majority of parties who do not comprise the majority of shareholders. Since the overall philosophy of a shareholders' agreement is to create a different balance of rights and obligations from that which would exist under the corporate law without such an agreement, the lawyers involved should carefully weigh the rights gained with those given up by their clients in such an agreement. Further, the business understanding among the shareholders should be thoroughly understood so that it is properly reflected in the agreement and in the relative shareholdings among the members.</p> <p><b>New developments:</b></p> <ul style="list-style-type: none"> <li>• <b>Changes for tax planning using private corporations.</b> Effective January 1, 2018, income splitting is now limited under the <i>Income Tax Act</i>, R.S.C. 1985, c. 1 (5th Supp.), for shareholders of private corporations, particularly professional corporations, with some narrow exceptions available. Further legislative changes will come into effect in 2019 to limit the small business deduction for private corporations paying dividends to a holding corporation or for passive investment purposes. Lawyers who act for private corporations should review the legislative changes prior to structuring or reorganizing their corporate structure and seek assistance of a tax advisor where necessary.</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> </ul> </li> </ul>	

ACTION TO BE CONSIDERED	NOTES
<ul style="list-style-type: none"> <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 of BC’s 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> <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> <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>Tax alert.</b> While certain portions of a shareholders’ agreement are indicated to be tax sensitive, many other aspects of the agreement may have significant tax implications, such as the financing and buy-out provisions. It is therefore strongly recommended that any shareholders’ agreement be reviewed by the parties’ respective tax advisors. In arranging for tax advice on the shareholders’ agreement, ensure that s. 84.1 of the <i>Income Tax Act</i>, R.S.C. 1985, c. 1 (5th Supp.), is addressed along with other relevant issues.</li> <li>• <b>Additional resources.</b> For more information about shareholders’ agreement content, see the <i>British Columbia Company Law Practice Manual</i>, 2nd ed. (CLEBC, 2003–), and in particular the Model Shareholders’ Agreement.</li> </ul>	

ACTION TO BE CONSIDERED	NOTES
<p style="text-align: center;"><b>CONTENTS</b></p> <ol style="list-style-type: none"> <li>1. Initial Contact</li> <li>2. Date of Agreement</li> <li>3. Identification of Parties</li> <li>4. Recitals</li> <li>5. Interpretation</li> <li>6. Representations</li> <li>7. Scope and Nature of Shareholders' Relationship</li> <li>8. Conduct of the Affairs of the Company</li> <li>9. Financing</li> <li>10. Restrictions on Transfer/Right of First Refusal</li> <li>11. Dispute Resolution/Compulsory Buy-out ("Shotgun" Clause)</li> <li>12. Obligation to Join in a Sale ("Drag-along") and Piggy-back Rights</li> <li>13. Obligation to Purchase/Obligation to Sell</li> <li>14. Indemnification and Discharge of Guarantees</li> <li>15. Insurance Policies</li> <li>16. Sale on Death</li> <li>17. Alter Ego Trust</li> <li>18. Default</li> <li>19. Family Law Considerations</li> <li>20. Miscellaneous and General Provisions</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 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. DATE OF AGREEMENT</b></li> <li><b>3. IDENTIFICATION OF PARTIES</b> <ol style="list-style-type: none"> <li>3.1 Identify the shareholders (generally all, but not necessarily). Consider Law Society Rules 3-98 to 3-109 regarding client identification and verification.</li> <li>3.2 Identify the company (especially if it will be obliged to purchase shares from a shareholder pursuant to the agreement).</li> <li>3.3 Where a shareholder is a company, consider adding its shareholders as parties to any covenant regarding control of the shareholder company.</li> <li>3.4 Consider including a spouse who may have an interest in the shares and ensuring that a certificate of independent legal advice be obtained with respect to the execution of the agreement by the spouse. See <i>BC Code</i> rules 3.4-27, 3.4-27.1, and 3.4-32. Note the definition of "spouse" in the <i>Family Law Act</i>, S.B.C. 2011, c. 25.</li> </ol> </li> </ol>	

ACTION TO BE CONSIDERED	NOTES
<p><b>4. RECITALS</b></p> <p>4.1 Describe company particulars, such as:</p> <ul style="list-style-type: none"> <li>.1 Business that will be carried on.</li> <li>.2 Authorized capital, including a list of shares issued to each shareholder.</li> <li>.3 A list of the shareholder loans owing from the company to the shareholders as of the date of the agreement, if any.</li> </ul> <p>4.2 Include a general statement of the legal relationship between the parties.</p> <p>4.3 Set out the reasons for entering into the agreement.</p> <p>4.4 Make a statement relating the recitals to the rest of the agreement, whether they form part of the binding provisions of the agreement or not.</p> <p>4.5 Consider reciting any particular reasonable expectations the parties may or may not have, or may expressly wish to exclude, as evidence in case of a dispute, including an oppression claim.</p> <p><b>5. INTERPRETATION</b></p> <p>5.1 Definitions:</p> <ul style="list-style-type: none"> <li>.1 Include specific definitions (consider setting them out in a schedule).</li> <li>.2 Include a general statement that accounting terms not defined will have the meaning ascribed to them in accordance with Canadian generally accepted accounting principles.</li> </ul> <p>5.2 Set out principles that govern the interpretation of the agreement (e.g., use of the masculine form, insertion of headings is for convenience only, use of the term “including”).</p> <p>5.3 Schedules, such as:</p> <ul style="list-style-type: none"> <li>.1 Definitions (see item 5.1.1).</li> <li>.2 Escrow agreement (see item 10.1.3).</li> <li>.3 Life insurance policies (see item 15.1).</li> <li>.4 Pro forma budget (see item 8.17).</li> </ul> <p><b>6. REPRESENTATIONS</b></p> <p>6.1 As to ownership of shares or ownership and control of shares of any corporate shareholders.</p> <p>6.2 Corporate status, power and capacity of corporate shareholders.</p> <p>6.3 If a transfer of shares is contemplated, a representation as to the power to sell, good title, and absence of liens.</p> <p><b>7. SCOPE AND NATURE OF SHAREHOLDERS' RELATIONSHIP</b></p> <p>7.1 Agreement governs dealings.</p> <p>7.2 No partnership created.</p> <p>7.3 No shareholder has power to bind any others except as expressly permitted.</p>	

ACTION TO BE CONSIDERED	NOTES
<p><b>8. CONDUCT OF THE AFFAIRS OF THE COMPANY</b></p> <p>8.1 Include a statement that, except as provided in the agreement, the conduct of the company's business will be governed by the articles and that, in the event of a conflict, the agreement will govern. Consider whether a covenant to amend the articles, in the event of a conflict with the agreement, is required. Consider whether to transfer any management powers to others (e.g. the shareholders) as permitted under s. 137 of the <i>Business Corporations Act</i>, S.B.C. 2002, c. 57 (the "BCA").</p> <p>8.2 Directors:</p> <ul style="list-style-type: none"> <li>.1 Number.</li> <li>.2 Appointment process (e.g., each shareholder to appoint one or more nominees).</li> <li>.3 Resignation.</li> <li>.4 Filling vacancies.</li> <li>.5 Removal (i.e., cause for removal, procedure, replacement).</li> <li>.6 Right of director to appoint an alternate.</li> <li>.7 Right of a nominee director to share information with their nominating shareholder (if applicable). Without consent by the company to such sharing of company information, a nominee director may be in breach of fiduciary duties by disclosing information to their nominating shareholder.</li> </ul> <p>8.3 Quorum for the transaction of business:</p> <ul style="list-style-type: none"> <li>.1 Number constituting a quorum, and whether a nominee for each shareholder is required to be present.</li> <li>.2 What happens when there is not a quorum (e.g., adjournment, with whoever attends the meeting following the adjourned meeting constituting a quorum).</li> <li>.3 Procedure, if any, for breaking a deadlock (such as a casting vote in the event of a tie, or "shot gun" provisions as discussed in item 11). Consider mandatory mediation, with appointment of a trusted third party.</li> </ul> <p>8.4 Directors' meetings:</p> <ul style="list-style-type: none"> <li>.1 Place and time. Consider including a requirement to hold meetings in Canada as a means of ensuring that factual residence of the company remains in Canada for tax purposes.</li> <li>.2 Calling a meeting, including notice requirements.</li> <li>.3 Meeting by telephone conference.</li> <li>.4 Quorum and voting.</li> </ul> <p>8.5 Shareholders' meetings:</p> <ul style="list-style-type: none"> <li>.1 Place and time.</li> <li>.2 Calling a meeting, including notice requirements.</li> <li>.3 Quorum and voting.</li> </ul>	

ACTION TO BE CONSIDERED	NOTES
<p>8.6 Officers and employees:</p> <ul style="list-style-type: none"> <li>.1 Positions.</li> <li>.2 Duties.</li> <li>.3 Compensation, where there is no separate employment contract. See item 8.8.</li> </ul> <p>8.7 Major decisions requiring unanimous, extraordinary, or special approval of the directors or the shareholders, as the case may be, such as:</p> <ul style="list-style-type: none"> <li>.1 Sale, lease, transfer, mortgage, pledge, or other disposition of the undertaking of the company or a subsidiary.</li> <li>.2 Any amendment to the notice of articles or articles, or other charter documents of the company or a subsidiary.</li> <li>.3 Increase or reduction in the capital of the company; issue of additional shares in the capital of the company.</li> <li>.4 Consolidation, merger, or amalgamation of the company with any other legal entity.</li> <li>.5 Capital expenditures or commitments exceeding a specified amount or specified term.</li> <li>.6 Leases of company property having a capital value exceeding a specified amount.</li> <li>.7 Borrowing by the company or a subsidiary which would result in aggregate indebtedness exceeding a specified amount.</li> <li>.8 Loans by the company or a subsidiary to a shareholder or affiliate.</li> <li>.9 Contracts between the company and a shareholder or affiliate.</li> <li>.10 Any transaction out of the ordinary course of business of the company, including changing the nature of the business.</li> <li>.11 Any change in the authorized signing officers in respect of legal documents or any financial institution.</li> <li>.12 Adoption or amendment of a budget.</li> <li>.13 Any agreement by the company restricting, or permitting any other party to accelerate or demand payment of company indebtedness upon the sale, transfer, or other disposition by a shareholder of their shares or loan.</li> <li>.14 Any amendment to any employment contract made between the company and one of the other parties to the agreement, or a representative of one of those other (corporate) parties.</li> <li>.15 Employment by the company of a shareholder's relative (or, for a corporate shareholder, its representative or a relative of that representative).</li> <li>.16 Waiver or appointment of an auditor.</li> <li>.17 Other decisions of particular importance having regard to the nature of the company business.</li> <li>.18 Any non-arm's-length transactions or transactions with shareholders.</li> </ul>	

ACTION TO BE CONSIDERED	NOTES
<p>8.8 Where the shareholders will be running the business, consider:</p> <ul style="list-style-type: none"> <li>.1 Including employment provisions in the shareholders' agreement (include provisions regarding expectations as to commitment of time and energy to the business of the company).</li> <li>.2 Having separate employment or management contracts tied to the shareholders' agreement so that a default by a shareholder under their employment contract would trigger a default under the shareholders' agreement.</li> </ul> <p>8.9 Shareholder's duties to the company:</p> <ul style="list-style-type: none"> <li>.1 Duty not to compete, during the time he or she is a shareholder and for a reasonable time thereafter, within a reasonable geographic area.</li> <li>.2 Methods for authorizing exceptions to the duty not to compete.</li> <li>.3 Duty of confidentiality.</li> <li>.4 Duty not to solicit customers, suppliers, or employees of the company.</li> </ul> <p>8.10 Statement that each shareholder acknowledges that, by reason of their unique knowledge of and association with the business of the company, the covenants set out in item 8.9 are reasonable and commensurate with the protection of the legitimate interests of the company, and that it is agreed that the covenants will be severable and subsist even if the rest of the agreement is terminated.</p> <p>8.11 Consider including a covenant of the shareholders to, upon the request of the company, provide a waiver of the requirements under the <i>BCA</i> that the company produce financial statements and/or appoint an auditor (ss. 200 and 203).</p> <p>8.12 Bank.</p> <p>8.13 Signing officers on bank accounts, and limitations on amounts, if any.</p> <p>8.14 Auditor/accountant/legal counsel.</p> <p>8.15 Books of account, financial statements, accounting principles, and provision of periodic financial statements.</p> <p>8.16 Indemnification of directors and officers (subject to the restrictions set out in s. 163 of the <i>BCA</i>), and purchase of directors' and officers' insurance, if appropriate.</p> <p>8.17 Pro forma budget (consider attaching it as a schedule and including a statement of intent).</p> <p>8.18 Consider the application of the above provisions to subsidiaries.</p>	
<p><b>9. FINANCING</b></p> <ul style="list-style-type: none"> <li>9.1 Initial financial contribution required from each shareholder, distinguishing between subscribed capital (equity) and shareholder loans.</li> <li>9.2 Mechanisms by which the company may raise additional funds for working capital: <ul style="list-style-type: none"> <li>.1 Borrowing from an institutional lender: <ul style="list-style-type: none"> <li>(a) Whether the company is required to try to obtain funds in this manner before turning to the shareholders.</li> </ul> </li> </ul> </li> </ul>	

ACTION TO BE CONSIDERED	NOTES
<p>(b) Whether the shareholders are required to enter into guarantees of indebtedness of the company (consider a provision that liabilities for guarantees will be shared pro rata, and that each shareholder will indemnify the others for their share of the amount guaranteed).</p> <p>.2 Borrowing from the shareholders:</p> <p>(a) Circumstances in which the company may do this, how the decision is made, and whether there is a maximum amount that may be demanded.</p> <p>(b) Contribution to be pro rata.</p> <p>(c) Notice requirements.</p> <p>(d) Shareholders' obligation (or option) to advance funds.</p> <p>(e) Where the shareholder is obliged to advance funds, a provision for failure to do so (e.g., default or a right granted to other shareholders to loan funds to the company on preferential terms, such as an increased interest rate).</p> <p>9.3 Whether shareholder loans bear interest and whether they are to be secured (if so, include obligations as to granting priority to other borrowings).</p> <p>9.4 Provisions regarding repayment of shareholder loans, including whether there is a right to demand repayment, whether the company can defer payment, or whether the company is required to repay shareholder loans pro rata based on the face value of the outstanding loans at the time of repayment.</p> <p>9.5 Other contributions required of shareholders (e.g., premises, personnel, directing opportunities, trademarks, technology, know-how).</p> <p>9.6 Distribution of net profit:</p> <p>.1 Statement that distribution will occur except as prohibited by the terms of debt financing or other agreements, and to the extent permitted by law, after the board has provided (by resolution) for such reserves as are necessary.</p> <p>.2 Frequency of distribution.</p> <p>.3 Priorities (e.g., repayment of loans, dividends).</p>	
<p><b>10. RESTRICTIONS ON TRANSFER/RIGHT OF FIRST REFUSAL</b></p> <p>10.1 Right of first refusal to be offered to the company or the other shareholders or both, setting forth:</p> <p>.1 The investment offered for sale, which may be required by the agreement to:</p> <p>(a) include, proportionately, preference shares and loans outstanding.</p> <p>(b) represent all or a specified minimum percentage of the shareholder's investment.</p> <p>.2 The purchase price.</p> <p>.3 The terms and conditions of the sale, including the method of payment, whether the price may be paid over time and, if so, provisions regarding interest on the unpaid balance, security on the unpaid balance (e.g., in the form of an escrow agreement annexed as a schedule), and whether prepayment can be made without penalty.</p>	



ACTION TO BE CONSIDERED	NOTES
<p>.4 The prospective purchaser (where there is an offer from a third party). Consider whether it should be a pre-condition that a third-party offer has been obtained.</p> <p>.5 Whether the offer may be accepted in part, or must be accepted in its entirety or not at all.</p> <p>.6 The length of time the offer is open for acceptance (as set out in the agreement).</p> <p>10.2 Where an offer is made to the company and the other shareholders as set out in item 10.1:</p> <p>.1 The secretary will, upon receipt:</p> <p style="padding-left: 20px;">(a) Transmit the offer to each director and shareholder.</p> <p style="padding-left: 20px;">(b) Call a meeting of the board to consider the offer.</p> <p>.2 If the company has first right to accept the offer and, to the extent that it does so, the shareholders agree to refuse any pro-rata offers required to be made by the company under the articles or the agreement.</p> <p>.3 If the offer is not wholly accepted by the company within the time set out in the agreement (which is a shorter time than the time during which the offer is open for acceptance):</p> <p style="padding-left: 20px;">(a) The secretary will so advise the shareholders.</p> <p style="padding-left: 20px;">(b) The portion of the offer not accepted by the company may be accepted by the shareholders pro rata within the time set out in the agreement (which is a shorter time than the time during which the offer is open for acceptance).</p> <p style="padding-left: 20px;">(c) Acceptance by the shareholders will be by notice to the secretary, and a shareholder may by such acceptance specify any additional portion of the investment offered for sale that he or she is prepared to purchase if the other shareholders fail to accept the offer.</p> <p style="padding-left: 20px;">(d) If any of the shareholders fail to accept the offer, any shareholder who has given notice of their preparedness to make an additional purchase may do so, on a pro-rata basis.</p> <p style="padding-left: 20px;">(e) At the expiry of the specified period, the secretary will advise the company of the extent to which the offer is still open.</p> <p>.4 If the offer has not been wholly accepted by the shareholders by the end of the specified period, the company is again entitled to accept the offer with respect to the portion still available. If it does so, the shareholders agree to refuse any offers required to be made by the company under the articles or the agreement.</p> <p>.5 Prior to the expiry of the period set out in the offer, the secretary will advise the offeror whether the offer has been accepted in its entirety, and, if so, by whom.</p> <p>.6 If the offer has not been wholly accepted within the specified time period, the offeror has the right, for a specified period of time, to dispose of the investment to a third party (specify whether this may be to any third party, upon no better terms and conditions than were set out in the offer, or to a particular third party, where the terms and conditions offered have first been offered to the other shareholders and have not been</p>	

ACTION TO BE CONSIDERED	NOTES
<p>taken up), provided that the third party has entered into an agreement with the company and the shareholders by which the third party is bound by the agreement.</p> <p>.7 Provisions regarding completion of the sale and closing mechanics (including where, when, and how).</p> <p>.8 Consider including a partial payment by way of set-off where the vendor is indebted to the company.</p> <p>10.3 Whether disposition to an affiliate or a related entity is authorized and, if so, under what conditions (e.g., that the affiliate will remain an affiliate so long as it holds the investment and, prior to ceasing to be an affiliate, will transfer the investment back to the shareholder; that the affiliate is bound by the agreement).</p> <p>10.4 A defaulting shareholder is not entitled to dispose of their investment pursuant to the above provisions unless prior to or concurrently with the transfer they cease to be a defaulting shareholder.</p> <p>10.5 Except as provided in the agreement, no shareholder will dispose of their investment without meeting the requirements set out in the agreement (e.g., prior written consent of the other shareholders, or of any other party where such consent is required by an agreement between the company and that party; and that the transferee must agree to be bound by the agreement).</p> <p>10.6 No shareholder will encumber their investment, except as may be permitted in the agreement.</p> <p>10.7 Upon execution of the agreement, the shareholders will surrender to the company each share certificate, which will be stamped to indicate that transfer is subject to the agreement. Consider whether shares should be placed in escrow to be dealt with in accordance with the agreement.</p>	
<p><b>11. DISPUTE RESOLUTION/COMPULSORY BUY-OUT (“SHOTGUN” CLAUSE)</b></p> <p>11.1 Consider including an obligation to negotiate, mediate or arbitrate, or pursue other means of resolving disputes, such as the following shotgun clause.</p> <p>.1 A shareholder may make a compulsory offer to the other shareholders to either sell all of their investment (including all shares in the company and shareholders’ loans held by that shareholder) or buy all of the other shareholders’ investment at the price and on the terms and conditions set out in the offer.</p> <p>.2 Notice requirements and limitation periods are as set out in the agreement.</p> <p>.3 The shareholders to whom the offer is made have the option of buying (pro rata) or selling at the per share price set out in the offer, but failure to give notice of the election within the specified time period will be deemed to be an acceptance of the offer to sell.</p> <p>11.2 Provide for a situation in which some shareholders elect to sell and some to buy.</p> <p>11.3 Prescribe how the sale will be completed (including where, when, and how).</p> <p>11.4 Consider including a set-off where the vendor is indebted to the company or the other shareholder(s).</p>	

ACTION TO BE CONSIDERED	NOTES
<p><b>12. OBLIGATION TO JOIN IN A SALE (“DRAG-ALONG”) AND PIGGY-BACK RIGHTS</b></p> <p>12.1 A piggy-back or co-sale right is a right of a shareholder to participate in a sale to a third party where a majority shareholder has received an offer by that third party to purchase their shares.</p> <p>.1 A shareholder holding a specified percentage of shares in the company (e.g., 66 ⅔) may require the other shareholders to join in a sale of all of the shares of the company to a third party, by notifying them of an offer received.</p> <p>.2 Notice requirements and limitation periods are as set out in the agreement.</p> <p>.3 The shareholders to whom the offer is made have the option of buying the investment of the shareholder who gave notice (pro rata) at the offered price, or of joining in the sale of all the investment to the third party.</p> <p>12.2 Provide for a situation in which some shareholders elect to sell and some to buy.</p> <p>12.3 Describe how the sale will be completed (including where, when, and how).</p> <p>12.4 Consider including a payment by way of set-off where the vendor is indebted to the company or the other shareholder(s).</p> <p>12.5 Consider whether the right of first refusal (item 10) should apply to a proposed transfer by a shareholder to a third party under the drag-along / piggy-back provisions.</p> <p><b>13. OBLIGATION TO PURCHASE/OBLIGATION TO SELL</b></p> <p>13.1 A shareholder may require the company or the other shareholders to purchase, or the company and the other shareholders may have the right to purchase, their investment, in the circumstances set out in the agreement (e.g., upon retirement from the work force or from active involvement in the company’s business).</p> <p>13.2 Price, terms and conditions, and procedure are as set out in the agreement (refer, for example, to relevant portions of item 10).</p> <p>13.3 If the company has non-Canadian resident shareholders, consider the effect that any rights to acquire shares in favour of the non-resident shareholder(s) will have on the company’s Canadian-controlled private corporation status, if applicable.</p> <p><b>14. INDEMNIFICATION AND DISCHARGE OF GUARANTEES</b></p> <p>14.1 Obligation of the shareholders and company, where a shareholder has disposed of all of their investment in compliance with the agreement, to use their reasonable efforts to have any guarantee or pledge issued or granted by the shareholder discharged or cancelled, and to indemnify the departing shareholder for liabilities arising with respect to such a guarantee or pledge subsequent to their departure.</p>	

ACTION TO BE CONSIDERED	NOTES
<p><b>15. INSURANCE POLICIES</b></p> <p><b>Caveat:</b> This section of the checklist is complex, and based on tax legislation that may change from time to time. It is strongly recommended that a tax expert be consulted before drafting these clauses.</p> <p>15.1 Consider the means of funding the purchase price, including the obligation of the company to own and maintain life insurance policies of a specified value on all shareholders and representatives of corporate shareholders (such policies to be listed in a schedule to the agreement). Or, alternatively, there may be an obligation on the shareholders and representatives to own and maintain criss-cross life insurance policies.</p> <p>15.2 Consider obligations of the shareholders to cooperate (e.g., by attending physical examinations). Where shareholders own policies, they may have obligations not to cancel, terminate, pledge, assign the policy, or change the beneficiary.</p> <p>15.3 Set out the rights of the company with respect to the policies, such as:</p> <ol style="list-style-type: none"> <li>.1 To apply any policy dividends to payment of premiums.</li> <li>.2 To collect death benefits.</li> <li>.3 No right to modify or impair any rights or values of the policies, or exercise any rights of ownership, except as provided in the agreement or with the prior written consent of the shareholders.</li> </ol> <p>15.4 Set out the rights of the shareholders with respect to the policies, such as:</p> <ol style="list-style-type: none"> <li>.1 To obtain information from the insurer regarding the status of the policy on their life.</li> <li>.2 To pay premiums where the company fails to do so, and to be reimbursed.</li> <li>.3 To purchase the policy on their life, at the price set out in the agreement (e.g., cash surrender value), on the happening of specified events (e.g., termination of the agreement during the lifetime of the shareholder).</li> <li>.4 Apply any dividends received on the policy to premiums.</li> </ol> <p>15.5 Consider including uninsurability provisions.</p> <p>15.6 An existing company may have existing life insurance policies that may qualify for favourable tax treatment; do not change or cancel such policies without considering this matter.</p> <p><b>16. SALE ON DEATH</b></p> <p><b>Caveat:</b> This section of the checklist is complex, and based on tax legislation that may change from time to time. It is strongly recommended that a tax expert be consulted before drafting these clauses.</p> <p>16.1 When a shareholder who is an individual dies, their personal representatives will sell the investment in the company held by the deceased. The company, the remaining shareholders, or a combination thereof (due to the application of the stop-loss or other rules contained in the <i>Income Tax Act</i>, R.S.C. 1985, c. 1 (5th Supp.)) will purchase the investment from the estate. Where the company is the purchaser and it has pre-existing company provisions, the remaining shareholders agree to refuse any offer</p>	

ACTION TO BE CONSIDERED	NOTES
<p>required to be made by the company under its articles. If it is a British Columbia company with pre-existing company provisions, consider whether the pre-existing company provisions should be removed pursuant to s. 442.1(3) of the <i>BCA</i> to avoid having to make pro-rata offers.</p> <p>16.2 When the representative of a corporate shareholder dies, the shareholder will sell, and the company or the remaining shareholders will purchase from the corporate shareholder, the investment held by it at the date of the representative's death. Where the company is the purchaser and it has pre-existing company provisions, the remaining shareholders agree to refuse any offer required to be made by the company under its articles.</p> <p>16.3 The purchase price and terms and conditions of payment are as set out in the agreement.</p> <p>16.4 Where the purchase is required to be made by the company, and the surplus and capital dividend account is insufficient to complete the purchase, the parties to the agreement agree to take the steps necessary to complete the purchase and to otherwise fund the purchase price.</p> <p>16.5 Where the purchase is required to be made by the remaining shareholders, it will be on a pro-rata basis.</p> <p>16.6 The company will, upon the death of the shareholder or representative of a corporate shareholder, claim and collect the proceeds of any life insurance policy. The proceeds will be applied as set out in the agreement (e.g., to pay any indebtedness of the company to the deceased, to pay the purchase price, to pay the remaining shareholders who make the purchase). Consider appropriate disposition of excess insurance proceeds.</p> <p>16.7 Provisions regarding completion of the sale, closing mechanics (including where, when, and how).</p> <p>16.8 At the closing the following will occur, in the order set out in the agreement:</p> <ul style="list-style-type: none"> <li>.1 The purchasers will pay the purchase price, or a specified percentage thereof, to the vendor, and deliver any documents that may be required (e.g., promissory notes, escrow agreements). Note Law Society Rule 3-59 with respect to the restrictions on receiving cash and Rule 3-70 for records of cash transactions.</li> <li>.2 The unpaid balance, if any, will be paid and secured as set out in the agreement. Consider security for the unpaid balance.</li> <li>.3 The vendor, on receipt of the purchase price or the portion payable pursuant to item 16.3, will give to the purchasers all share certificates, instruments, conveyances, assignments, and releases as may be reasonably required to complete the sale and to transfer all of the investment.</li> <li>.4 Where the purchasers are the remaining shareholders, the company will pay to them a capital dividend equal to the lesser of the purchase price or the proceeds of any life insurance policy (and, in the latter case, the company will elect to have the dividends payable out of its life insurance capital dividend account pursuant to the provisions of the <i>Income Tax Act</i>).</li> </ul> <p>16.9 Consider providing for a purchase-price adjustment to take into account the value of the investment as determined by the Canada Revenue Agency. Generally, such a clause would be inappropriate in an arm's-length (as opposed to a non-arm's-length) situation, so consider carefully before including such a clause.</p>	

ACTION TO BE CONSIDERED	NOTES
<p>16.10 Provide that the agreement will have no application upon the death of the final shareholder or representative of a corporate shareholder, notwithstanding any other term of the agreement or if the shareholders die within a specified time (e.g., 60 days).</p>	
<p><b>17. ALTER EGO TRUST</b></p>	
<p>17.1 If a party is at least 65 years old, consider the use of an alter ego trust to avoid possible application of wills variation legislation.</p>	
<p><b>18. DEFAULT</b></p>	
<p>18.1 Circumstances that constitute a default, such as:</p>	
<p>.1 Failure to carry out obligations under the agreement after the other shareholders have made a written demand that the failure be cured.</p>	
<p>.2 Failure to defend assiduously a proceeding affecting title, possession, or management of the shareholder's investment after the other shareholders have made a written demand that the failure be cured.</p>	
<p>.3 Bankruptcy, commission of an act of bankruptcy, the appointment of a receiver or receiver-manager with respect to the shareholder's assets, or an assignment for the benefit of creditors or otherwise.</p>	
<p>.4 Change in control of a corporate shareholder.</p>	
<p>.5 Termination of employment of a shareholder, or a representative of a corporate shareholder, who was employed by the company.</p>	
<p>.6 Incapacity (as defined in the agreement).</p>	
<p>.7 Retirement (see also item 13).</p>	
<p>.8 Failure by a shareholder to meet technical or administrative qualifications imposed by a regulatory body or association as a prerequisite to practice a particular profession as a shareholder/employee of the company.</p>	
<p>18.2 Consequences of default (indicate if consequences differ for different types of default, and indicate alternatives), such as:</p>	
<p>.1 Winding-up of the company under the articles or Part 10 of the <i>BCA</i>.</p>	
<p>.2 Other parties may waive the specific default.</p>	
<p>.3 Other parties may pursue any remedy available in law or equity (be mindful of the two-year basic limitation period under s. 6 of the <i>Limitation Act</i>, S.B.C. 2012, c. 13).</p>	
<p>.4 Other parties may take such actions as may reasonably be required to cure the default, in which case expenses will be recoverable as provided in the agreement.</p>	
<p>.5 Implementation of a buy-sell procedure, whereby:</p>	
<p>(a) The defaulting shareholder is deemed to offer to sell all or a part of their investment to the company or the other shareholders.</p>	
<p>(b) The purchase price is determined as set out in the agreement (e.g., a discounted value for specified types of default—but not a penalty).</p>	
<p>(c) The terms and conditions and procedure are as set out in the agreement (refer, for example, to relevant portions of item 10).</p>	

ACTION TO BE CONSIDERED	NOTES
<p>.6 Where the default consists of failure to make a loan to the company as required under the agreement (see item 9.2.2), additional remedies may be provided to the non-defaulting shareholders, such as:</p> <ul style="list-style-type: none"> <li>(a) Recovery of loans made to the company.</li> <li>(b) Right to elect not to make the loan without being held to be in default.</li> <li>(c) Right to make the loan on behalf of the defaulting shareholder and be entitled to reimbursement from the defaulting shareholder and from the company out of any funds owing to the defaulting shareholder; this may bring the defaulting shareholder out of default, if requirements set out in the agreement are met.</li> </ul>	
<p><b>19. FAMILY LAW CONSIDERATIONS</b></p> <p>19.1 Consider whether an option should be granted to the shareholders or the company to buy shares held by a shareholder if an application is made for a claim or transfer of property under applicable family law legislation. If such an application is made then, regardless of its merits, the option could be exercised and the shareholder could be compelled to sell their shares to the other shareholders on a pro rata basis.</p>	
<p><b>20. MISCELLANEOUS AND GENERAL PROVISIONS</b></p> <p>20.1 If the addition of further shareholders is contemplated, consider annexing the form of agreement to be executed by new shareholders.</p> <p>20.2 Set the interest rate on any funds required to be paid to other shareholders (except default loans under item 18.2.6).</p> <p>20.3 Consider circumstances that will terminate the agreement, such as:</p> <ul style="list-style-type: none"> <li>.1 The company goes into bankruptcy, has a receiving order made against it, or makes a proposal to its creditors.</li> <li>.2 Written consent of the parties.</li> <li>.3 The company becomes a reporting issuer under securities laws.</li> <li>.4 There being only one remaining shareholder of the company.</li> </ul> <p>20.4 If a shareholder disposes of all their interest in compliance with the agreement, then he or she is bound by only the rights and obligations which arose pursuant to the agreement prior to the disposition.</p> <p>20.5 Further assurances.</p> <p>20.6 Entire agreement.</p> <p>20.7 Amendments may be made by unanimous written agreement or by a certain percentage of shareholdings.</p> <p>20.8 Severability of invalid provisions.</p> <p>20.9 Time is of the essence.</p> <p>20.10 Failure to insist upon strict performance of any provision of the agreement will not prevent a subsequent violation of the agreement from having the effect of an original violation.</p>	

ACTION TO BE CONSIDERED	NOTES
<p>20.11 Notices:</p> <ul style="list-style-type: none"> <li>.1 Addresses for service.</li> <li>.2 Prepaid registered mail, email, or other arrangement.</li> <li>.3 Deemed date of receipt.</li> </ul> <p>20.12 Arbitration. An arbitration provision should be considered but may not be appropriate. Further, if one is included, consider whether the arbitration clause removes the court's jurisdiction with respect to statutory remedies such as the oppression remedy.</p> <p>20.13 Choice of law.</p> <p>20.14 Choice of forum or jurisdiction. Is it exclusive or not?</p> <p>20.15 Execution and delivery in counterparts, and consider fax or e-mail signatures, with originals to follow.</p> <p>20.16 Binding on heirs and executors and assignment.</p> <p>20.17 Titles.</p> <p>20.18 Remedies are cumulative.</p> <p>20.19 Consider including general provisions that would apply to any share transfer: standard representations and warranties (e.g., title, no encumbrances, residency of vendor for tax purposes), standard terms relating to closing arrangements, payment of purchase price, interest, security or escrow for purchase price paid over time, prepayment of purchase price, default on payment, indebtedness, resignations, releases, non-competition clauses, restrictive covenants, consents of third parties, etc.</p> <p>20.20 Consider including a general provision restricting the application of provisions in the agreement respecting share transfer where a change in control of the company would require the consent of third parties (e.g., lease) or would trigger adverse tax implications, such as a deemed year-end, loss of Canadian-controlled private company status, etc. Alternatively, include provisions requiring the company to obtain such third-party approvals.</p> <p>20.21 Legend on share certificates.</p> <p>20.22 Acknowledgment of independent legal advice.</p> <p>20.23 Schedules (if any).</p>	