

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p style="text-align: center;"><b>INTRODUCTION</b></p> <p><b>Purpose and currency of checklist.</b> This checklist is designed to be used with the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1) and PARTNERSHIP AGREEMENT DRAFTING (B-9) checklists. It is current to September 1, 2018.</p> <p><b>New developments:</b></p> <ul style="list-style-type: none"> <li>• <b>Changes to the Partnership Act.</b> The <i>Finance Statutes Amendment Act, 2012</i>, S.B.C. 2012, c. 12, includes amendments to the <i>Partnership Act</i> that are not yet in force. Amendments affecting forms of registration statements and notices, registration of foreign partnerships, and reservation of names are scheduled to come into force on December 14, 2018 (BC Reg. 15/2018). It is strongly recommended that practitioners verify their status prior to drafting any partnership agreement.</li> <li>• <b>Law Society Rules</b> <ul style="list-style-type: none"> <li>• <b>Juricert password.</b> When using the electronic filing system of the Land Title Office, a lawyer must not disclose the lawyer’s password or permit any other person, including an employee, to use the password or affix the lawyer’s e-signature (Law Society Rule 3-96.1).</li> <li>• <b>Temporary articulated student restrictions.</b> Temporary articulated students are restricted from making certain appearances in Supreme Court, but not Provincial Court (Law Society Rule 2-71(2)).</li> <li>• <b>Electronic transfer of trust funds.</b> The Rules were amended in December 2017, effective July 1, 2018, to allow lawyers to electronically transfer trust funds using an online banking platform (Law Society Rules 3-64(4) and (6) to (8); 3-64.1; 3-64.2; 3-65(1), (1.1), and (2); and 3-66(2)). For questions, contact <a href="mailto:trustaccounting@lsbc.org">trustaccounting@lsbc.org</a> or 604.697.5810.</li> <li>• <b>Client identification and verification.</b> The Federation of Law Societies of Canada has proposed amendments to its Model Rule on Client Identification and Verification Requirements. If the Federation’s Council approves the amendments, they will be forwarded to the law societies for adoption. Changes to the Law Society 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> </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</li> </ul>					

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<p>www.lawsociety.bc.ca/our-initiatives/rule-of-law/issues-that-affect-the-rule-of-law. 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>.</p> <ul style="list-style-type: none"> <li> <b>Aboriginal law.</b> Special considerations apply to businesses involving “Indians” and Indian “reserves” (both as defined in the <i>Indian Act</i>, R.S.C. 1985, c. I-5). While significant tax and other advantages may be available under the <i>Indian Act</i>, as well as through some government programs, these are affected by, among other things, the type of business, transaction nature, business entity (sole proprietorship, partnership, joint venture, trust, or incorporated company), location of business activity on or off reserve land, and the specific reserve and its governance. In addition to <i>Indian Act</i> considerations, some Indian bands or First Nation entities have entered into treaties or self-government agreements that may have governance, taxation, land, and other business-related implications. The Crown’s duty to consult and, where appropriate, seek accommodation with respect to decisions or activities potentially affecting Aboriginal or treaty rights and title may also have implications for businesses with government agreements, government-issued tenures, or seeking Crown permits, authorizations, or approvals.                 <p>Businesses that engage in activities on, or potentially affecting, reserve lands or lands subject to treaty rights or claims of Aboriginal rights or title are strongly encouraged to familiarize themselves with applicable laws and government policies. Consider seeking advice from a lawyer who has experience in Aboriginal law matters. Further information on Aboriginal law issues is available on the “Aboriginal Law” page of the “Practice Areas” section of the Continuing Legal Education Society of British Columbia website (www.cle.bc.ca) and in other CLEBC publications.</p> </li> <li> <b>Tax Alert.</b> As some aspects of a partnership agreement may have significant tax implications for the parties, it is recommended the parties seek advice from their respective tax advisors.                 </li> <li> <b>Additional resources.</b> For further information about partnership agreements, see <i>Advising British Columbia Businesses</i> (CLEBC, 2006–), <i>Partnerships and Societies for Legal Support Staff and Junior Lawyers—2011</i> (CLEBC, 2011), and <i>Working With Partnerships—2016</i> (CLEBC, 2016).                 </li> </ul>					

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<p style="text-align: center;"><b>CONTENTS</b></p> <ol style="list-style-type: none"> <li>1. Initial Contact</li> <li>2. Initial Interview</li> <li>3. After the Initial Interview</li> <li>4. Drafting the Agreement</li> <li>5. Closing the File</li> </ol> <p style="text-align: center;"><b>CHECKLIST</b></p> <ol style="list-style-type: none"> <li><b>1. INITIAL CONTACT</b> <ol style="list-style-type: none"> <li>1.1 Arrange an interview.</li> <li>1.2 Ask the client to bring all relevant information to the interview.</li> <li>1.3 Confirm compliance with Law Society Rules 3-98 to 3-109 on client identification and verification, and complete the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1) checklist.</li> </ol> </li> <li><b>2. INITIAL INTERVIEW</b> <ol style="list-style-type: none"> <li>2.1 Determine who you will be acting for. Ensure that there is no conflict of interest. In the case of a corporate client, confirm who is authorized to give you instructions. Find out the names and addresses of other parties and their lawyers, if any. Ensure that you comply with the <i>Code of Professional Conduct for British Columbia</i> (the “BC Code”), which addresses conflicts in s. 3.4. See the model conflicts of interest checklist on the Law Society website at <a href="http://www.lawsociety.bc.ca/docs/practice/resources/checklist-conflicts.pdf">www.lawsociety.bc.ca/docs/practice/resources/checklist-conflicts.pdf</a>.</li> <li>2.2 Advise the client regarding calculation of your account, method and timing of payment, and conditions upon which you will act (see <i>BC Code</i>, s. 3.6 regarding reasonable fees and disbursements, and commentary [1] to rule 3.6-3 regarding the duty of candour owed to clients respecting fees and other charges). If your retainer is limited in scope (e.g., confidential drafting), note that <i>BC Code</i> rule 3.2-1.1 requires that, before undertaking a “limited scope retainer” (a defined term under rule 1.1-1), you must advise the client about the nature, extent, and scope of the services that you can provide and must confirm in writing as soon as practicable what services will be provided. Note that rule 3.2-1.1 regarding “limited scope retainers” does not apply to situations in which you are providing summary advice or to an initial consultation that may result in the client retaining you as lawyer. Also be aware of the obligations in <i>BC Code</i> rules 3.1-2, 7.2-6, and 7.2-6.1.</li> <li>2.3 Discuss the background of the parties and their relationship, the business of the partnership, the general nature of the proposed agreement as the client understands it, and the client’s objectives and expectations.</li> <li>2.4 Determine whether the parties can incorporate rather than form a partnership and, if so, discuss the relative advantages and disadvantages of incorporation.</li> </ol> </li> </ol>					

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<p>2.5 Discuss the definition and tests for the existence of a partnership (<i>Partnership Act</i>, ss. 1 to 4), including the fact that a general partnership can exist in the absence of a partnership agreement, and may exist already, depending on the conduct of the parties. A limited partnership does not arise when an agreement is executed, but only when a certificate is filed (<i>Partnership Act</i>, s. 51). Similarly, a limited liability partnership arises only when a registration statement is filed, although it may have existed as a general or a limited partnership before filing. Any business carried on by the parties before filing may be carried on as a general partnership. Advise the client that entering into negotiations in respect of a partnership agreement can give rise to fiduciary obligations.</p> <p>2.6 Discuss the advantages and disadvantages of general and limited partnerships, and the possibility of registering as a limited liability partnership, including that an existing general partnership or limited partnership may register as a limited liability partnership.</p> <p>2.7 Where a general partnership is to be established, discuss the relevant provisions of the <i>Partnership Act</i>, including:</p> <ul style="list-style-type: none"> <li>.1 Agency, effect of actions of a partner (ss. 7 to 10 and 16 to 18).</li> <li>.2 Liability of partners (ss. 11 to 15, subject to s. 95(2) in the case of a limited liability partnership, and 19).</li> <li>.3 Duties and rights of partners (ss. 22, 27, 31 to 33, and 40 to 47).</li> <li>.4 Partnership property and judgments (ss. 23 to 27).</li> <li>.5 Assignment of interest (s. 34).</li> <li>.6 Effect of a change in constitution (ss. 20 and 39).</li> <li>.7 Expulsion of a partner (s. 28).</li> <li>.8 Termination and continuation of a partnership (ss. 29 and 30).</li> <li>.9 Dissolution (ss. 35 to 38).</li> <li>.10 Where the partnership is formed for trading, manufacturing, or mining purposes, the requirement to file a registration statement and to amend it as required (ss. 81 to 88). (Note there are amendments to these provisions under the <i>Finance Statutes Amendment Act, 2012</i>, S.B.C. 2012, c. 12, that are scheduled to come into force on December 14, 2018.)</li> <li>.11 Limitations on names similar to corporations (s. 89). (Note that s. 89 will be repealed and replaced by provisions set out in s. 96 of the <i>Finance Statutes Amendment Act, 2012</i>, that are scheduled to come into force on December 14, 2018.)</li> </ul> <p>2.8 Where a limited partnership is to be established, discuss the relevant provisions of the <i>Partnership Act</i>, including:</p> <ul style="list-style-type: none"> <li>.1 Such provisions set out in item 2.7 as are applicable (s. 49).</li> <li>.2 The formation of a limited partnership occurs only upon the filing of a certificate (s. 51), and that any prior activity may be as partners without limited liability. (Note there are amendments to s. 51 set out in s. 83 of the <i>Finance Statutes Amendment Act, 2012</i>, that are scheduled to come into force on December 14, 2018.)</li> </ul>					

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<p>.3 Limitations on names similar to corporations (s. 89). (Note that s. 89 will be repealed and replaced by provisions set out in s. 96 of the <i>Finance Statutes Amendment Act, 2012</i>, that are scheduled to come into force on December 14, 2018.)</p> <p>.4 The need to amend the certificate as required (s. 70) or to cancel it (s. 69). (Note there are amendments to s. 70 under the <i>Finance Statutes Amendment Act, 2012</i>, that are scheduled to come into force on December 14, 2018.)</p> <p>.5 The requirement that there be at least one limited and one general partner (s. 50).</p> <p>.6 The ability of a partner to be both a general and a limited partner (s. 52).</p> <p>.7 Requirements for maintaining an office and records (ss. 54 and 70). (Note there are amendments to ss. 54 and 70 under s. 87(a) of the <i>Finance Statutes Amendment Act, 2012</i>, that are scheduled to come into force on December 14, 2018.)</p> <p>.8 Powers and rights of general partners (ss. 56, 73, and 78).</p> <p>.9 Powers and rights of limited partners (ss. 55, 58 to 62, 66, 68, and 73).</p> <p>.10 Liability of limited partners (ss. 57, 63, 64, and 68).</p> <p>.11 Addition of limited partners (s. 65).</p> <p>.12 Assignment of a limited partner’s interest (s. 66).</p> <p>.13 Partnership property and judgments (s. 76).</p> <p>.14 Dissolution (s. 67).</p> <p>.15 Renunciation by a person who mistakenly believed himself or herself to be a limited partner (s. 75).</p> <p>2.9 If a limited liability partnership is to be used, discuss the relevant provisions of the <i>Partnership Act</i>, including:</p> <p>.1 That Parts 1, 2, 4, and 5 apply (s. 95(1)), except as provided in s. 95(2).</p> <p>.2 Limitations on names similar to corporations (s. 89). (Note that s. 89 will be repealed and replaced by new provisions set out in s. 96 of the <i>Finance Statutes Amendment Act, 2012</i>, that are scheduled to come into force on December 14, 2018.)</p> <p>.3 Limited personal liability of partners is addressed in ss. 104, 105, and 106.</p> <p>.4 Partners in a limited liability partnership may be personally liable in respect of a partnership obligation if and to the same extent as a director would be liable for the obligations of a limited company (excluding common-law obligations and those under <i>Business Corporations Act</i>, s. 142), and directors of a corporation which is itself a partner in a limited liability partnership have the same potential liability (s. 105).</p> <p>.5 A partner in a limited liability partnership retains liabilities that arose in an existing partnership before it became a limited liability partnership (s. 106).</p> <p>.6 Upon registration of a partnership as a limited liability partnership, existing clients must be notified (s. 107).</p>					

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<p>.7 Records must be maintained (s. 109) in a registered office in British Columbia (s. 108).</p> <p>.8 Annual reports and changes in the registration statement must be filed (ss. 110 and 111). (Note that s. 111 will be amended by the provisions set out in s. 105 of the <i>Finance Statutes Amendment Act, 2012</i>, that are scheduled to come into force on December 14, 2018.)</p> <p>.9 There are restrictions on distributions of partnership property of a limited liability partnership, and liability for a distribution contrary to such provisions (ss. 112 and 113).</p> <p>.10 Winding-up and dissolution requires notice and may be subject to court order (ss. 126 and 127).</p> <p>.11 Registration may be cancelled by the registrar (s. 129), although it is not thereby dissolved, and the <i>Partnership Act</i> applies to it as if the partners were partners in a general partnership.</p> <p>2.10 Discuss <i>Partnership Act</i> provisions that may be modified by agreement: e.g., rights, duties, powers, and liabilities of partners (ss. 21, 27, 32, 33, 45 to 47, 56, 59, 61, 63, and 78); expulsion (s. 28); termination of the partnership (s. 29); dissolution (ss. 35, 36, and 67); partnership property (ss. 23(3) and 24); and assignment of a limited partner's interest (s. 66).</p> <p>2.11 Discuss in detail the proposed agreement, referring to the clauses set out in the PARTNERSHIP AGREEMENT DRAFTING (B-9) checklist. Include key points and <i>Partnership Act</i> provisions:</p> <p>.1 Who are to be the partners:</p> <p>(a) Partners may be individuals, corporations, partnerships, or legal representatives.</p> <p>(b) Consider the desirability of a Canadian residency requirement in light of provisions under the <i>Income Tax Act</i>, R.S.C. 1985, c. 1 (5th Supp.), permitting a partner to transfer property to a Canadian partnership, and sections permitting dissolution in certain circumstances, without immediate tax cost. Note that including a residency requirement will also mean including a provision for expulsion of a partner who becomes a non-resident.</p> <p>.2 Purpose and term of the partnership:</p> <p>(a) What type of partnership is it? What is its purpose?</p> <p>(b) What term is appropriate, and how is the partnership to be terminated?</p> <p>(c) Advise that the Supreme Court of Canada has clarified that for tax (and other) purposes, a partnership must meet the fundamental criteria that a partnership is “the relation which subsists between persons carrying on business in common with a view of profit” (<i>Partnership Act</i>, s. 2).</p> <p>.3 Management of the partnership and the role of the partners, bearing in mind the implications if a limited partner takes part, or is deemed to have taken part, in the management of the business:</p> <p>(a) In general, what role is each partner or each type of partner (general and limited) to play?</p> <p>(b) Who has banking authority, who is responsible for day-to-day management, and how are major decisions made?</p>					

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<p>(c) If a partner is a corporation or other legal person, how will it be represented, and what will be the effect of various circumstances such as the death of the representative?</p> <p>(d) Is it intended that all general or limited liability partners be and remain actively involved in management? If the client is going to be a general or limited liability partner and is not going to be actively involved, advise him or her to keep informed of the partnership's financial affairs. Consider whether it is desirable that the client be a signing officer.</p> <p>(e) Is the client going to be an employee of the partnership? If so, consider the need for a separate employment contract (possibly tied to the partnership agreement) or for employment clauses in the agreement. If the client is to be a limited partner, ensure that they are not giving services as part of their contribution (s. 55).</p> <p>(f) Is competition or conflict of interest to be permitted and, if so, to what extent and by what procedure? Stress the accountability provisions (ss. 32 and 33). Even if provision is made in the partnership agreement, advise that it may still be desirable to disclose and obtain clear consent regarding particular conflict situations.</p> <p>(g) Should there be any restrictive covenants, including non-competition covenants and non-solicitation covenants (which require careful drafting in order to be enforceable)?</p> <p>(h) Ensure that nothing in the agreement (e.g., restriction of the powers of the general partners) constitutes participation by the limited partners in management (s. 64).</p> <p>.4 Financing:</p> <p>(a) In general, how much money is needed for the proposed venture, for what purposes is it to be spent (on what, how much, when), how is the partnership to be financed, how will partners put money into the partnership and on what terms, how will the capital accounts of each partner be monitored, and how will partners get their money out?</p> <p>(b) If the client has not already done so, advise the client to discuss financing issues with a financial advisor (e.g., the prospective accountant, auditor, or banker).</p> <p>(c) Are items such as cars, office furniture, etc. to be provided by the partnership, or will they be the responsibility of each partner?</p> <p>(d) Consider advising the client to meet with the other parties and draw up a pro forma budget. This might be attached to the partnership agreement as a statement of intention.</p> <p>(e) Discuss methods by which partners can get a return from the partnership (e.g., salary, interest on loans, repayment of loans, distributions) and the prohibition of a return of capital to limited partners except as provided (s. 62).</p> <p>(f) Discuss the status and priority of a loan to the partnership by a partner, and explain the special position of a limited partner under s. 60 and a limited liability partner under s. 112.</p> <p>.5 Partnership property:</p> <p>(a) In general, what property is or will be partnership property and what property being dealt with is or will be separate property?</p>					

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<p>(b) Discuss whether any property will be assigned to the partnership by the partners at the time of formation, and consider whether any additional documentation such as an assignment of property is required.</p> <p>(c) What is the nature of the interest of each partner in the partnership and its assets (e.g., whether, in the case of a general or limited liability partnership, the interest of each partner consists merely of contractual rights, or if it represents an undivided interest in the assets of the partnership)? The entitlement of limited partners is limited generally to their contribution plus any profits; they do not have any “independent” ownership rights in the property of the limited partnership.</p> <p>.6 Restrictions on any transfer of interest. In general, whether there will be any restrictions (such as rights of first refusal, shotgun provisions, piggy-back or drag-along rights) and, if so, in what circumstances and why such restriction is needed.</p> <p>.7 Consequences of certain types of events:</p> <p>(a) In general, discuss various types of events that might occur, and the desired consequences. Determine whether the consequences are to be optional or mandatory. Events to be considered should include death, termination of employment, a partner’s desire to sell the partner’s interest in the partnership, retirement, incapacity, bankruptcy, insolvency, default under the partnership agreement or an employment contract, change in control of a corporate partner, or a partner ceasing to be resident in Canada for the purposes of the <i>Income Tax Act</i>, etc.</p> <p>(b) Ensure that you have covered any circumstances in which a partner can force the other partners to buy that partner out and circumstances in which other partners can force a partner to sell.</p> <p>.8 Where a sale to the partnership or the other partners is contemplated:</p> <p>(a) Is the sale to the partnership, the partners, or both? If it is to both, how is this to be handled (e.g., priority, procedures, timing)?</p> <p>(b) How is the purchase to be paid and funded?</p> <p>.9 Valuation (of interest, of purchase price in various circumstances, etc.):</p> <p>(a) Values or methods for calculating the values should be set out in the partnership agreement and should be practical, reasonable, and certain.</p> <p>(b) Advise the client to consult a financial advisor as to the most appropriate valuation methods.</p> <p>.10 Mechanisms for dispute resolution (e.g., a shotgun or compulsory purchase clause, dissolution of the partnership, arbitration).</p> <p>Note the first Protocol of Amendment to the New West Partnership Trade Agreement (the “NWPTA”), signed January 6, 2015, which clarified labour mobility language and dispute resolution provisions.</p> <p>2.12 Advise regarding the tax consequences of the partnership and the proposed provisions, including the treatment of partners under the <i>Income Tax Act</i>, and the responsibility of the partnership to collect and remit PST/GST, or advise the client to get specialized tax advice (particularly with respect to provisions dealing with purchase of the interest of a deceased partner).</p>					



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<p>Note that effective April 1, 2013, the harmonized sales tax (“HST”) was eliminated, and the <i>Provincial Sales Tax Act</i>, S.B.C. 2012, c. 35, reinstated the PST; GST (rather than HST) now applies under the <i>Excise Tax Act</i>, R.S.C. 1985, c. E-15. Both PST and GST are generally applicable to legal services. Further information about the GST and PST can be found at <a href="http://www.cra-arc.gc.ca">www.cra-arc.gc.ca</a> and <a href="http://www2.gov.bc.ca">www2.gov.bc.ca</a>.</p> <p>2.13 Ensure that the proposed provisions are workable and reasonable in the circumstances.</p> <p>2.14 In the case of a limited partnership, stress that:</p> <ol style="list-style-type: none"> <li>.1 No action should be taken before the certificate is filed, as the limited partnership does not exist until that time and persons carrying on business may be liable as general partners.</li> <li>.2 The limited liability of a limited partner may be lost, for example where: <ol style="list-style-type: none"> <li>(a) That partner was or became aware of a false statement in the certificate filed pursuant to s. 51 of the <i>Partnership Act</i> (s. 74).</li> <li>(b) That partner’s name appears in the firm name, contrary to s. 53 of the <i>Partnership Act</i>.</li> <li>(c) That partner takes part in the management of the business (s. 64).</li> <li>(d) That partner’s, or the partnership’s, liability is governed by the law of another jurisdiction that does not recognize the limitation of a partner’s liability.</li> </ol> </li> </ol> <p>2.15 In the case of a limited liability partnership, advise that a partnership does not become a limited liability partnership until the registration statement is filed (s. 96).</p> <p>2.16 Discuss whether the partnership will carry on business in any other jurisdictions and should be extraprovincially registered. Note that in the case of general partnerships, registration as an extraprovincial partnership is not available, and the <i>partnership</i> legislation of the applicable province(s) should be consulted for any registration requirements. With respect to limited partnerships and limited liability partnerships, the NWPTA eliminates certain duplicative filing and reporting requirements for extraprovincial registration in Alberta and Saskatchewan. Under the Trade, Investment and Labour Mobility Agreement (the “TILMA”) and the NWPTA (effective July 1, 2012), British Columbia, Alberta, and Saskatchewan agreed to reconcile their business registration and reporting requirements, so that an enterprise meeting the requirements of one province would also be deemed to meet the requirements of the other province. Under Part 7 of the <i>Partnership Act</i>, the Lieutenant Governor in Council may name “designated provinces” and make regulations affecting foreign partnerships, limited partnerships, and extraprovincial limited liability partnerships from such a province. Presently only Alberta and Saskatchewan are “designated provinces”. For information about Corporate Registry procedures pursuant to the <i>New West Partnership Trade Agreement Implementation Act</i>, S.B.C. 2011, c. 3, visit the NWPTA page on the Corporate Registry website at <a href="https://www2.gov.bc.ca/gov/content/employment-business/business/managing-a-business/permits-licences/businesses-incorporated-companies/new-west-partnership-trade-agreement">https://www2.gov.bc.ca/gov/content/employment-business/business/managing-a-business/permits-licences/businesses-incorporated-companies/new-west-partnership-trade-agreement</a>.</p>					

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<p>2.17 Discuss the provisions of the <i>Securities Act</i>, R.S.B.C. 1996, c. 418, if applicable. Advise that, generally, a person is prohibited from trading in a security when such trade would be in the course of a distribution to the public. If partnership interests are distributed to persons in another jurisdiction, the securities laws of that jurisdiction must also be considered.</p> <p>2.18 Discuss the possible use of a management company. Discuss the implications and risks for limited liability where a limited partner (or director or officer of a corporate limited partner) acts as a director or officer of the management company or of a general partner. Emphasize, at a minimum, that the person should be careful to separate any such positions from their status as a limited partner.</p> <p>2.19 Where the client has not already done so, advise the client to discuss the various issues with the other parties and reach a satisfactory solution that will ensure continuing fairness to all parties, then inform you of the results.</p> <p>2.20 Get instructions to proceed with drafting the partnership agreement and any other agreements required, including an employment contract or an assignment of property to the partnership, if appropriate.</p>					
<p><b>3. AFTER THE INITIAL INTERVIEW</b></p>					
<p>3.1 Send a letter to the client confirming the retainer and instructions, setting out the manner in which you will determine your fee for services (see <i>BC Code</i>, s. 3.6), stating the conditions upon which you have agreed to act, and summarizing the points discussed.</p>					
<p>3.2 Open the file: place this checklist in the file and make entries in your diary and “BF” systems. Confirm compliance with Law Society Rules on client identification and verification (see item 1.3).</p>					
<p>3.3 Communicate by letter with lawyers representing any other party, advising that you are acting for your client (see <i>BC Code</i> rules 7.2-6 and 7.2-8). If any other party has not retained counsel, send a letter urging the other party to do so and advising that you are acting only for your client (see <i>BC Code</i> rule 7.2-9).</p>					
<p>3.4 Conduct any relevant searches, such as:</p>					
<p>.1 Company searches of all corporate parties.</p>					
<p>.2 Name search and firm name reservation with the Corporate Registry (s. 89) (Note that s. 89 will be repealed and replaced by provisions set out in s. 96 of the <i>Finance Statutes Amendment Act, 2012</i>, not yet in force).</p>					
<p>.3 Registrations under the <i>Personal Property Security Act</i>, R.S.B.C. 1996, c. 359.</p>					
<p>.4 Land title office.</p>					
<p>3.5 Consider legislation in other relevant jurisdictions (e.g., where the partnership intends to carry on business or to sell interests), in particular whether the limited liability of the limited partners will be effective in such jurisdictions.</p>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p><b>4. DRAFTING THE AGREEMENT</b></p> <p>4.1 Prepare an outline of the agreement, indicating the clauses from your precedent file that will be included (see the PARTNERSHIP AGREEMENT DRAFTING (B-9) checklist). Also prepare an outline of any other documents required, such as a s. 81 registration statement, a s. 96 registration statement, a s. 51 certificate, an employment contract, or an assignment of property to the partnership. (Note that the <i>Finance Statutes Amendment Act, 2012</i>, not yet in force, includes amendments to ss. 51, 81, 89, and 96.)</p> <p>4.2 Prepare the first draft.</p> <p>4.3 Review the first draft, checking each segment to ensure that it achieves the client’s objectives, and checking the document as a whole to ensure that it is internally consistent. Make any necessary corrections and prepare the second draft.</p> <p>4.4 Go over the second draft with the client, or send it to the client with a request that that client review it and note any changes or questions. Discuss changes or questions.</p> <p>4.5 Make any changes required to the second draft, and send copies to the other parties or their lawyers for comment. Review any alterations with the client.</p> <p>4.6 Prepare the final documents. Ensure compliance with the requirements of <i>Partnership Act</i>, s. 81, s. 96, or s. 51, as appropriate, again checking for the proclamation of amendments pursuant to the <i>Finance Statutes Amendment Act, 2012</i>, that are scheduled to come into force on December 14, 2018.</p> <p>4.7 Arrange for signing and execution of:</p> <ul style="list-style-type: none"> <li>.1 Partnership agreement.</li> <li>.2 General partnership registration statement (s. 81), if applicable.</li> <li>.3 Limited partnership certificate (s. 51) (caution regarding the effect of knowledge of any false statement therein), if applicable.</li> <li>.4 Limited liability partnership registration statement (s. 96), if applicable.</li> <li>.5 Employment contracts.</li> <li>.6 Assignment(s) of property.</li> <li>.7 Check whether amendments pursuant to the <i>Finance Statutes Amendment Act, 2012</i> affecting ss. 51, 81, and 96 are in force (these are scheduled to come into force on December 14, 2018).</li> </ul> <p><b>5. CLOSING THE FILE</b></p> <p>5.1 File documents:</p> <ul style="list-style-type: none"> <li>.1 File s. 81 registration statement with the registrar within three months after formation of the firm (s. 82), accompanied by the prescribed fee (s. 93). Note that electronic filing of the registration statement is now permitted; see <a href="http://www.bcregistryservices.gov.bc.ca">www.bcregistryservices.gov.bc.ca</a>.</li> <li>.2 File s. 51 certificate for a limited partnership with the registrar immediately, accompanied by the prescribed fee (s. 93), and notify the client as soon as this is done.</li> </ul>					

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<p>.3 File s. 96 registration statement for a limited liability partnership immediately, accompanied by the prescribed fee (s. 93).</p> <p>5.2 Complete any assignments of property to the partnership, as well as any necessary registrations.</p> <p>5.3 Send a reporting letter and statement of account to the client. Where a partnership was registered as a limited liability partnership, advise the client to take reasonable steps to notify all of its existing clients in writing that the partnership was registered as a limited liability partnership and of the changes to the liability of the partners as a consequence of such registration (s. 107). Advise that changes in circumstances, legislation (e.g., tax law), insurance requirements, etc. make it essential that the agreement be reviewed from time to time. Ascertain whether the client wishes that to meet for this purpose from time to time and, if so, make entries in your diary and “BF” systems.</p> <p>5.4 Close the file. Consider storage and destruction requirements. See <i>Closed Files—Retention and Disposition</i>, August 2017, Appendix B at <a href="http://www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/ClosedFiles.pdf">www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/ClosedFiles.pdf</a>.</p>					